

* THE HON'BLE SRI JUSTICE A.RAMALI NGESWARA RAO

+ Writ Petition No. 4159 of 2015

% 24.11.2016

Narendra Agrawal

...Petitioner

vs.

\$ The Managing Director,
Indian Immunologicals Limited, Hyderabad
(A wholly owned subsidiary of the National
Dairy Development Board), Road No.44, Jubilee Hills,
Hyderabad and others.

... Respondents

!Counsel for the Petitioner : Party in Person

^ Counsel for the Respondents : Sri Vedula Srinivas

< Gist :

> Head Note :

? Cases referred

1. (1990) 1 AnWR 675 : (1990) 1 APLJ 368
2. (2015) 148 DRJ 55 (W.P.(C).Nos. 3110 & 5809 of 2011 & CM.
Nos.6577 & 11833 of 2011, dated 02.02.2015)
3. (1986) 3 SCC 156
4. (2002) 5 SCC 111
5. 2003(2) ALD 392
6. (2013) 8 SCC 345
7. (2015) 3 SCC 251
8. (2015) 4 SCC 670
9. (1989) 2 SCC 691
10. (2012) 12 SCC 331
11. (2005) 4 SCC 649 : AIR 2005 SC 2677
12. AIR 1975 SC 1329 : (1975) 1 SCC 485
13. (1975) 1 SCC 421
14. 90 L Ed 265 : 326 US 501 (1946)
15. (1997) 3 SCC 571
16. (2003) 4 SCC 225
17. (1969) 1 SCC 585
18. (2003) 10 SCC 733

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition No. 4159 of 2015

Between:

Narendra Agrawal

...Petitioner

and

The Managing Director,
Indian Immunologicals Limited, Hyderabad
(A wholly owned subsidiary of the National
Dairy Development Board), Road No.44, Jubilee Hills,
Hyderabad and others.

...Respondents

JUDGMENT PRONOUNCED ON

: 24.11.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

:

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : YES
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? : YES

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No.4159 of 2015

Order:

The petitioner filed this Writ Petition through his counsel initially and later on argued the case in person. Heard the petitioner in person and the learned counsel for the respondents.

As per the averments in the affidavit filed in support of the Writ Petition, the petitioner states that the respondent-Company is a wholly owned subsidiary of National Dairy Development Board and that of the Government of India. Thus, it is amenable to the jurisdiction of this Court. He further states that majority of the employees except the Managing Director are engaged on contract basis. The petitioner was appointed as Manager Grade-III in marketing department by a letter of appointment dated 02.03.2007. He was initially appointed for a period of three years with effect from 28.02.2007 and his services were stated to be terminable by giving one month notice or by paying one month salary in lieu of notice. He states that he joined the second respondent company after having qualified in B. Pharmacy and MBA. He was sponsored by the Company to undergo executive programme in Marketing (EPM) from IIM, Kozhikode. The compensation payable to the petitioner was revised from time to time and his services were also renewed from time to time. He was promoted as Manager Grade-II with retrospective effect from 01.04.2013. By a Circular dated 20.03.2014 he was given full charge of Marketing-HR and Training and Development of entire marketing work force. However, things became adverse and he was denied revision of compensation though the compensation package was enhanced to all the employees with effect from 01.04.2014. The respondents started

harassing and humiliating him and the petitioner was asked to vacate his cabin and share the office space with an employee who is much junior to him on 25.11.2014. When he applied for a casual leave on 26.11.2014 the same was rejected. In those circumstances, he addressed a representation to the fourth respondent on 25.11.2014 ventilating his grievances and it was followed by e-mail dated 22.12.2014. Instead of addressing the grievances, he was issued with an office order dated 02.01.2015 transferring him to distribution department at Ooty plant and he was informed that he would not have any seat in the Head Office from 05.01.2015 onwards and he was asked to report at the transferred place by that date. Due to this turn of events, the petitioner developed health complications and he was admitted in the hospital on 05.01.2015, but a show cause notice was issued on 06.01.2015 alleging that the petitioner was unauthorisedly absent without prior permission or intimation. He submitted a reply on 11.01.2015 after discharge from the hospital. He was asked to vacate the quarters by 15.02.2015. The request for personal hearing to the fourth respondent did not yield any result. The petitioner was again admitted in hospital on 23.01.2015 and when he was undergoing treatment, the impugned order dated 24.01.2015 was issued terminating his services with one month notice by invoking Clause 18 of the contract of employment. Challenging the same, the present Writ Petition was filed.

A counter affidavit is filed on behalf of the respondents raising the objection with regard to maintainability of the Writ Petition. It is stated that the second respondent company is not a Government of India establishment but it is wholly owned subsidiary company of the National Dairy Development Board (NDDB). It has nothing to do with the

Government of India as alleged by the petitioner. The second respondent company is independent in its governance with a Board of Directors and it was registered as a non-government company by the Registrar of Companies, Hyderabad. Thus, the second respondent company is not an instrumentality of the State. It is further stated that the objectives of the respondent company is only towards its members and customers (human beings and animals who use and likely to use its vaccines and animal formulations) only. It has no power to take any action affecting the rights of the members of the public. The contract of service between the petitioner and the second respondent cannot be termed as coming under public law. It is a pure and simple contract of service regulating the relationship between the petitioner and the second respondent.

It is further stated that the petitioner was initially appointed as Manager in the grade of M-III in Marketing Department vide letter of appointment dated 02.03.2007 on fixed tenure contract basis for a period of three years. Thereafter, his appointment was renewed from time to time based on organizational needs subject to meeting performance standards and continued compatibility to organizational values and work ethos and the tenure of the petitioner comes to an end on 31st March 2015. The petitioner, during his tenure with the respondent company, had some or other issues with co-employees, used to disobey the instructions of his superiors and functional heads, involves himself in unnecessary arguments with the colleagues etc. The petitioner did not mend his ways in spite of several warnings. In view of the disrespectful behavior of the petitioner, he was moved from one department to another and due to administrative reasons he was transferred to Ooty vide order of transfer dated 02.01.2015. On receipt of the said order of transfer, the

petitioner has begun pretending to be unwell and when he was asked to show relevant medical claim of ill-health he failed to provide the same. Though the petitioner was supposed to report to duty at Ooty plant of the respondent company on 05.01.2015, he failed to report despite oral and written instructions. Though the respondent company arranged for his travelling to Ooty by providing him with the air ticket from Hyderabad to Coimbatore, he refused to go. He threw his transfer order and the air ticket in the cabin of his functional head in a most disrespectful manner. In those circumstances, the respondents issued the order of termination by letter dated 24.01.2015 as per the terms of his employment. The termination letter along with a cheque equivalent to one month salary was served on him on 24.01.2015. The order of termination was passed in terms of the contract and it cannot be termed as illegal. In fact the petitioner himself, in his various letters stated that he would discontinue his employment with the respondent company. The performance of the petitioner was rated as NSP (Normal Satisfactory Performance) and he was entitled to only 7% increment as per performance management system of the respondent company and accordingly he was given performance incentive by proceedings dated 10.08.2007. The petitioner was cautioned on several occasions not to write frivolous emails to people unrelated but he continued his ways to create a negative work environment and atmosphere within the respondent company and to bring disrepute to the company. The petitioner was not given any permanent employment and the term, 'permanent employee' referred to in the pay slips was created only in order to distinguish him from casual workers, third party employees, contract workers and other types of employees. The petitioner approached the Human Rights Commission of AP, at

Hyderabad, but did not state the same in his affidavit filed in support of the Writ Petition. The other allegations made by the petitioner in his affidavit are denied.

The petitioner filed a reply to the counter denying the status of the respondent company as a non-governmental company by stating that the National Dairy Development Board is declared as an Institution of National Importance under a Special Act of Parliament, the NDDB Act 1987 (Act 37 of 1987) and the respondent company being a wholly owned subsidiary of the said statutory authority becomes a 'State' amenable to the jurisdiction of this Court. The entire equity of the second respondent company is owned by the NDDB and the second respondent is listed in the Gazette of India as wholly owned subsidiary of NDDB. The Chairman of the NDDB is appointed by a Committee of the Cabinet, Government of India and he also happens to be the Chairman of the second respondent company. All the directors of the second respondent company are appointed by the NDDB. The letter issued by the General Manager-HR of the company says that it is a public sector company and the vehicles bear the tag of Government vehicles. It conducts special recruitment drive for Scheduled Caste and Scheduled Tribe candidates and the code of conduct of the employees prohibit the criticism of the Government. The correspondence shows that the Government of India seeking explanation from the second respondent company on petitioner's case and the second respondent responding to the same. The letter of appointment of the petitioner states that the service of the petitioner is transferable to NDDB. He further states that the children of the employees of the second respondent company are eligible for admission in Kendriya Vidyalayas based on the letters issued by the respondents and Parliamentary

Standing Committee carries out periodical inspection of the second respondent company. Though the respondents cited behavioral issues they could not issue any notice to him at any point of time in support of their allegations. The denial of the health condition of the petitioner is also found fault by the petitioner in the reply. The petitioner was never a signatory to the renewals of service and hence there cannot be any termination of contract. The petitioner further stated that the very sanction of increment shows that his services were not contractual. The over all employment clearly shows that the terms are not contractual as the age of retirement was included later. The medical reports were submitted to the respondents via internal mail after discharge and it cannot be said that his health condition was good. Even if the status of the petitioner was stated as permanent employee in the pay slips in order to distinguish from other employees who were appointed on contract basis, casual workers and third party employees, there was no necessity to describe the same as stated, as the other employees will not have any pay slips. He was treated as permanent employee right from the beginning. The petitioner further stated that he approached the Human Rights Commission at Hyderabad in December 2014, much before the order of termination.

A rejoinder was filed to the reply filed by the petitioner though it is not a usual practice. In the rejoinder it was denied that the Chairman of National Dairy Development Board who would be appointed by the Government of India is the Chairman of the second respondent company and all the Directors of the Company are appointed by the NDDB. The appointment of the Board of Directors would be decided in the Annual General Body Meeting. The Managing Director is also appointed after due

selection by the Board of Directors of the company. A stray sentence in the letter of the General Manager(HR) cannot make the second respondent as a public sector company. The tag on the vehicles of the company styling them as Government vehicles is dispensed with. The other instances mentioned with regard to prohibition from criticism of governmental activities and conducting the recruitment drive for Scheduled Caste and Scheduled Tribe candidates would not make the respondent company a Government company. The reply furnished to the Ministry of Agriculture, Department of Animal Husbandry, New Delhi on the case of the petitioner cannot make the second respondent a Government company. The other instances also will not make the respondents amenable to writ jurisdiction of this Court. Initially the second respondent company was a unit of the NDDB and accordingly it was shown in the Gazette of India dated 14.06.1988. But later on it was incorporated as separate company, was deleted from the list of units of NDDB and it was added in the list of subsidiaries of NDDB. Neither the Government of India nor the NDDB has any say in the affairs of the second respondent company. The second respondent company functions in a highly competitive business atmosphere where several private manufacturers operate for selling its products in the trade market and by participating in the tender process. The second respondent did not take any financial aid from the Government or the NDDB and it generates its own income. The Board of the second respondent company takes all the decisions for running the company and there is no administrative, financial or any kind of authority exercised by the Government on the second respondent.

After holding a preliminary hearing it was thought that the issue could be sorted out and accordingly the matter was referred to the Mediation Centre for which the petitioner as well as the respondents agreed. The effort did not fructify, as a result of which the Court heard the elaborate submissions made by the petitioner-in-person as well as by the counsel for the respondents.

The petitioner submitted that the Writ Petition is maintainable as the second respondent company is a wholly owned subsidiary of the NDDB, which is a statutory authority and declared as an institution of national importance by the Government of India while enacting the law. He further submitted that his employment was not contractual and the order of termination passed on the assumption that his employment was contractual is illegal. He relied on a decision of this Court in SKCC Bank Limited, Amalapuram, rep. by General Manager, East Godavari District v. N. Seetharama Raju¹ and order of the Delhi High Court in Mother Dairy Fruit & Vegetable Private Limited Vs. Hatim Ali².

Learned counsel for the respondents submitted that though the second respondent company is a wholly owned subsidiary of the National Dairy Development Board, it is a statutory authority. The Writ Petition is not maintainable against the second respondent company as it does not fulfill the criteria required for attracting the jurisdiction of this Court. He further submitted that the contract of the petitioner comes to an end with effect from 31.03.2015 and his services were terminated by giving one month salary in lieu of notice as per the terms of the contract. He relied

¹ (1990) 1 AnWR 675 : (1990) 1 APLJ 368

² (2015) 148 DRJ 55 (W.P.(C).Nos. 3110 & 5809 of 2011 & CM. Nos.6577 & 11833 of 2011, dated 02.02.2015)

on the decisions reported in Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly³, Pradeep Kumar Biswas v. Indian Institute of Chemical Biology⁴, Krishi Foundry Employees Union, Industrial Estate, Hyderabad v. Krishi Engines Limited⁵, Balmer Lawrie and Company Limited v. Partha Sarathi Sen Roy⁶, Board of Control for Cricket in India v. Cricket Association of Bihar⁷ and K.K. Saxena v. International Commission on Irrigation and Drainage⁸.

In view of the above submissions, the following points are framed for consideration in the present Writ Petition.

- (1) Whether the second respondent company is a 'State' or 'other authority' in order to be amenable to the jurisdiction of this Court under Article 226 of the Constitution of India?
- (2) If so, whether the order of termination of service of the petitioner passed on 21.04.2015 is valid or not?

In order to decide the first point the following admitted facts are necessary to be considered:

The second respondent is a wholly owned subsidiary company of the National Dairy Development Board which was established under the Statute, National Dairy Development Board Act, 1987 (Act 37 of 1987). It is registered as a non-government company by the Registrar of Companies, Hyderabad. As per the audit report dated 30.06.2015, the entire paid up capital of the company to the tune of Rs.9,000,001/- is held

³ (1986) 3 SCC 156

⁴ (2002) 5 SCC 111

⁵ 2003(2) ALD 392

⁶ (2013) 8 SCC 345

⁷ (2015) 3 SCC 251

⁸ (2015) 4 SCC 670

by the National Dairy Development Board, the holding statutory body constituting 99.99% of the shares. It borrowed its monies from Public Sector Banks as well as NDDB. The company itself is having a subsidiary company, Pristine Biologicals (NZ) Limited, New Zealand. It is managed by a Chairman and four Directors.

The party-in-person submitted that the following instances are relevant for considering whether the 2nd respondent is a 'State' or 'other authority':

- (i) the Chairman of the NDDB appointed by the Appointment Committee of the Cabinet, Government of India is also the Chairman of the second respondent company;
- (ii) the letter issued by the General Manager-HR of the second respondent Company describes it as a public sector company;
- (iii) the respondents used the vehicles with "Government Vehicle" tag;
- (iv) CDA of the second respondent company says that the employees should not criticize the Government;
- (v) the second respondent company conducts special recruitment drive for Scheduled Caste and Scheduled Tribe candidates;
- (vi) the Ministry of Agriculture, Department of Animal Husbandry sought explanation from the second respondent company on petitioner's case;
- (vii) the services of the petitioner are transferable to NDDB, and the children of the employees of the second respondent company are given admission in Kendriya Vidyalayas.

Though the above instances appear to give an impression that the 2nd respondent is a 'State' or 'other authority', they are not permissible indicia to decide the nature of the Company and those aspects were clarified/denied by the respondents in their counter also. In this factual situation it has to be seen whether the second respondent Company is

amenable to the jurisdiction of this Court in the light of the following decisions of the Hon'ble Supreme Court.

In *Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*⁹, the Hon'ble Supreme Court considered the term 'authority' used in Article 226 of the Constitution and observed as follows.

"20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."

"22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (S.A de Smith, *Judicial Review of Administrative Action* (4th Edn., Stevens & Sons Ltd., London 1980) at p. 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

⁹ (1989) 2 SCC 691

In Pradeep Kumar Biswas's case (supra), the Hon'ble Supreme Court observed as follows.

"39. Fresh off the judicial anvil is the decision in the Mysore Paper Mills Ltd. vs. The Mysore Paper Mills Officers Association (JT 2002 (1) SC 61) which fairly represents what we have seen as a continuity of thought commencing from the decision in Rajasthan Electricity Board in 1967 up to the present time. It held that a company substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government is 'an authority' within the meaning of Article 12.

40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia v. Khalid Mujib Sehravardi* ((1981) 1 SCC 722) are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be - whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

The decision in *Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust's* case (supra) was followed in *Ramesh Ahluwalia v. State of Punjab*¹⁰.

The observations of the Hon'ble Supreme Court in *Zee Tele Films Ltd. v. Union of India*¹¹ are as follows.

"167. The courts exercising the power of judicial review both under Articles 226, 32 and 136 of the Constitution of India act as a "sentinel on the qui vive." [See *Padma v. Hiralal Motilal Desarda and others* (2002) 7 SCC 564 at 577)

¹⁰ (2012) 12 SCC 331

¹¹ (2005) 4 SCC 649 : AIR 2005 SC 2677

168. A writ issues against a State, a body exercising monopoly, a statutory body, a legal authority, a body discharging public utility services or discharging some public function. A writ would also issue against a private person for the enforcement of some public duty or obligation, which ordinarily will have statutory flavour.

169. Judicial Review casts a long shadow and even regulating bodies that do not exercise statutory functions may be subject to it. (Constitutional and Administrative Law; by A.W. Bradley and K.D. Ewing (13th Edn.) Page 303).

170. Having regard to the modern conditions when Government is entering into business like private sector and also undertaking public utility services, many of its actions may be a State action even if some of them may be non-governmental in the strict sense of the general rule. Although rule is that a writ cannot be issued against a private body but thereto the following exceptions have been introduced by judicial gloss:

- (a) Where the institution is governed by a statute which imposes legal duties upon it;
- (b) Where the institution is 'State' within the meaning of Article 12.
- (c) Where even though the institution is not 'State' within the purview of Article 12, it performs some public function, whether statutory or otherwise."

In the said decision, the Hon'ble Supreme Court also held that the traditional tests of a body controlled financially, functionally and administratively by the Government as laid down in Pradeep Kumar Biswas's case (supra) would have application only when a body is created by the State itself for different purposes but incorporated under the Indian Companies Act or Societies Registration Act. The Hon'ble Supreme Court also observed that it was not bound by the decision in Pradeep Kumar Biswas's case (supra) which was rendered in the context of examining the decision of the Constitution Bench in *Sabhajit Tewary v. Union of India*¹². It was ultimately held that the question is required to be determined in each case having regard to the nature of and

¹² AIR 1975 SC 1329 : (1975) 1 SCC 485

extent of authority vested in the State. It is not possible to generalize the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions.

In Board of Control for Cricket in India's case (supra), the Hon'ble Supreme Court considered whether Board of Control for Cricket in India (BCCI) is 'State' within the meaning of Article 12 and if it is not, whether it is amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India. The Hon'ble Supreme Court considered the decisions in Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi¹³ and Marsh v. Alabama¹⁴ and observed as follows.

"23. In Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi (1975) 1 SCC 421), one of the questions that fell for considerations was whether an employee of statutory corporation like Oil and Natural Gas Commission established under the Oil and Natural Gas Commission Act 1959, Indian Finance Corporation, established under the Indian Finance Corporation Act, 1948 and the Life Insurance Corporation under the Life Insurance Corporation Act, 1956, was entitled to claim protection of Articles 14 and 16 against the Corporation. A Constitution Bench of this Court answered the question in the affirmative by a majority of 4:1. Mathew, J. in his concurring judgement referred to Marsh v. Alabama (326 U.S. 501 (1946): 90 L Ed 265) to hold that even where a corporation is privately performing a public function it is bound by the constitutional standard applicable to all State actions.

24. Marsh v. Alabama (supra), it is noteworthy, arose out of a prosecution launched against a Jehovah's witness for her refusal to leave the sidewalk where she was distributing religious pamphlets. She was fined five dollars but aggrieved by her prosecution she approached the Supreme Court to argue that the corporation that owned the town had denied the right of religious liberty available to Marsh. The U.S. Supreme Court upheld the contention and declared that administration of public bodies like a town through private entities was tantamount to carrying out functions of a public body. Private right of the corporation

¹³ (1975) 1 SCC 421

¹⁴ 90 L Ed 265 : 326 US 501 (1946)

could, therefore, be exercised only within constitutional limitations. Black, J. speaking for the Court observed: (Marsh case, L Ed p. 268)

“.....The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. Thus, the owners of privately held bridges, ferries, turnpikes and railroads may not operate them as freely as a farmer does his farm. Since these facilities are built and operated primarily to benefit the public and since their operation is essentially a public function, it is subject to state regulation.”

Frankfurter, J. in his concurring opinion simply added that the function discharged by the corporation as a municipal corporation was a public function hence subject to State Regulation.”

It also considered the decision in Zee Tele Films Ltd's case (supra) and held that the majority view favours the view that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not “State” within the meaning of Article 12. The said view is based on “nature of duties and functions” which BCCI performs. Thus, it ultimately held that in view of the nature of functions of the BCCI, though it cannot be called as a “State” within the meaning of Article 12 of the Constitution it is certainly amenable to writ jurisdiction under Article 226 of the Constitution of India. This view was taken by two-Judge Bench in spite of the decision of the Constitution Bench in Zee Tele Films Ltd's case (supra).

The Hon'ble Supreme Court in K.K. Saksena's case (supra), after surveying the previous case law, held that a contract of personal service cannot be enforced subject to the following exceptions;

- (i) when the employee is a public servant working under the Union of India or State;

- (ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and
- (iii) when such an employee is “workmen” within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.

It was further held that in respect of first two cases, the employment ceases to have private law character and “status” to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the Labour Court/Industrial Tribunal to grant reinstatement in case termination is found to be illegal. In view of the said pronouncement, the issue that comes up for consideration in the present case is a situation envisaged in (ii) above. Considering the cases in *Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani* (supra) and *K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering*¹⁵, it was held in *K.K. Saksena’s* case (supra) that if the rights are purely of a private character, no mandamus can issue and if the management of the college is purely a private body “with no public duty”, mandamus will not lie. It was held that the term “authority” appearing in Article 226 of the Constitution would cover any other person or body performing public duty. The Court took note of the decision in *G. Bassi Reddy v. International Crops Research Institute*¹⁶, and held that merely because the activity of the research institute enures to the benefit of the Indian public, it cannot be a guiding factor to determine the character of the Institute and bring the same within the sweep of “public function or public duty”. The Court took into consideration the decisions

¹⁵ (1997) 3 SCC 571

¹⁶ (2003) 4 SCC 225

of the said Court in *Praga Tools Corporation v. C.A. Imanual*¹⁷ and *Federal Bank Limited v. Sagar Thomas*¹⁸, wherein the eight categories mentioned were quoted in the following terms.

"40. Somewhat more pointed and lucid discussion can be found in *Federal Bank Ltd. v. Sagar Thomas* (2003) 10 SCC 733), inasmuch as in that case the Court culled out the categories of body/ persons who would be amenable to writ jurisdiction of the High Court. This can be found in para 18 of the said judgment, specifying eight categories, as follows:

"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against

- (i) the State (Government);
- (ii) an authority;
- (iii) a statutory body;
- (iv) an instrumentality or agency of the State;
- (v) a company which is financed and owned by the State;
- (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and
- (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."

.....

43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is a 'State' within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of Common Law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is 'State' under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is

¹⁷ (1969) 1 SCC 585

¹⁸ (2003) 10 SCC 733

challenged, is in the domain of public law as distinguished from private law.”

The facts in this case show that the second respondent Company is a wholly owned subsidiary of the statutory Corporation which is declared to be a Company of ‘national importance’. Though on the basis of nature of duties discharged by the second respondent Company on its own, it cannot be conclusively held that it is discharging a public duty, but, in view of the relationship of the second respondent Company with the statutory Corporation, it has to be examined whether the attributes that are applicable to the ‘holding company’ can be extended to the wholly owned subsidiary also.

As per the Articles of Association of the second respondent Company, the number of Directors shall not be less than four (4) and shall not be more than twelve (12). It was stated in Article 10(2) that NDDB shall have a right to appoint directors on the Board of the Company and the Chairman, NDDB shall be the Chairman of the Company and the relevant portion of Article 10(2) to (6) reads as follows.

- “(2) Subject to Article 9, NDDB shall have a right to appoint directors on the Board of the Company.
- (3) The Chairman, NDDB shall be the Chairman of the Company.
- (4) The Chairman and Managing Director of the Company shall be the non-rotational directors.
- (5) The term of office of remaining Directors shall be three years and such Directors shall retire on the expiry of the said term or on their ceasing to be in the employment of their organizations whether on resignation or otherwise; whichever is earlier. However, NDDB may re-appoint any Director or Directors for such period as it may decide.
- (6) Subject to the provisions of Sec.284 of the Companies Act, the NDDB may remove any director from office at any time before they complete the term.”

The preamble to the National Dairy Development Board Act, 1987 (37 of 1987) reads as follows.

“to declare the institution known as the National Dairy Development Board in the State of Gujarat to be an institution of national importance and to provide for its incorporation and for the vesting in that body corporate of the undertakings of the Indian Dairy Corporation with a view to provide for the administration and the carrying on of the functions to be performed by the body corporate more effectively throughout the country and for matters connected therewith and incidental thereto.”

(emphasis supplied)

Section 8(3) of the National Dairy Development Board Act, 1987 says that the Chairman and the official director shall be nominated by the Central government and other directors shall be nominated by the Central Government after consultation with the Chairman. Section 27 says that the Board shall cause the books and accounts to be closed and balanced as on the 31st day of March each year with the concurrence of the Central Government. The appointment of auditors and remuneration shall be subject to the approval of the Central Government and the auditors shall submit their report to the Board which shall forward a copy of their report to the Central Government as could be seen from Section 28. Section 29 says that the Central government shall cause the report of the auditors to be laid before both the Houses of Parliament as soon as it is received by the Central Government. Section 48(2)(i) provides for making the regulations in accordance with the provisions of the Act by notification in the Gazette of India providing for various matters including conditions of service of officers and other employees. Section 49 empowers the Central Government to remove any difficulty by an order published in the official Gazette. The notes to financial statements enclosed to the accounts of

the 2nd respondent company indicate the following particulars for the year ended 31st March 2015.

“Notes to financial statements (continued)

(All amounts are in Indian Rupees (Rs.) in millions except for share data or otherwise stated)

2.31 Related party disclosures (continued)

(b) Particulars of related party transactions

Transactions during the year	For the year ended 31 st March 2015	For the year ended 31 st March 2014
Term loans repaid to NDDB	40.17	123.11
Working capital demand loan taken from NDDB	250.00	0.03
Interest expense to NDDB	67.81	62.41
Rent to NDDB	24.71	25.17
Royalty to NDDB	0.24	0.08
Dividend paid to NDDB	13.50	13.50
Testing and Analysis charges paid to NDDB	0.24	-
Reimbursement of expenses to NDDB	24.30	-
Reimbursement of expenses to NDDB Dairy Services Private Limited	-	0.15
Stores and Spares from IDMC Limited	1.38	0.04
Loan given to PBNL	30.83	-
Interest income on loan to PBNL	0.81	-
Sales to Mother Dairy Fruit & Vegetable Private Limited	1.58	0.68
Fixed assets purchased from IDMC Limited	202.98	59.12
Remuneration* paid to:		
Managing Director	10.59	9.78
Deputy Managing Director	8.04	7.23
Chief Financial Officer	2.99	2.72
Company Secretary	2.09	1.71

* Does not include insurance, which is paid for the Company as a whole and gratuity and compensated absences as this is provided in the books of account on the basis of actuarial valuation for the Company as a whole and hence individual amount cannot be determined.”

The balance sheet of NDDB discloses that the second respondent company is a wholly owned subsidiary of it and there is no dispute with regard to that.

The word ‘holding company’ and ‘subsidiary’ are defined in Section 4 of the Companies Act. Section 2 of the Companies Act defines the ‘subsidiary company’ as follows.

“(87) "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company-

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.-For the purposes of this clause,-

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression "company" includes any body corporate;
- (d) "layer" in relation to a holding company means its subsidiary or subsidiaries;"

The issue with regard to the control exercised by the Central Government over the wholly owned subsidiaries of the NDDB was considered by the High Court of Delhi in a different context in a Writ Petition considering the application of the provisions of the Information Act, 2005, in Mother Dairy Fruit & Vegetable Private Limited's case (supra). It was observed as follows:

"14. Plainly, the control exercised by a shareholder holding the entire share capital of a company is qualitatively different from the control exercised by any regulatory authority such as a Registrar of Companies or a Registrar of Cooperative Societies. The extent of control exercised by such authorities is defined and circumscribed by its purpose; that is, to ensure compliance with the governing statutes, rules and regulations. An incorporated entity is required to conform with the statute under which it is incorporated. Such control does not, directly or indirectly, influence the manner in which the affairs of an incorporated entity are to be conducted or the course, which such incorporated entities may legitimately take. The Registrar of Companies is not concerned in the manner in which a company conducts its business as long as it does not violate the provisions of the enactment under which it is incorporated or transgresses its charter documents (i.e Memorandum of Association or Articles of Association). It is open for a company to carry on

its business in the manner as its shareholders or its directors deem fit. The nature of control exercised by shareholders is qualitatively different from the control exercised by the Registrar of Companies over such incorporated entity. The shareholders have the ability to laydown the policy to be followed by a company and further guide its affairs in the direction that they deem appropriate in their wisdom. The control exercised by shareholders, pervades the entire functioning of the company. The fact that such control may be exercised by amending the Articles of Association or by appointment/removal of directors does not dilute the grip of the majority shareholders over the affairs of the company.

15. In *LIC v. Escorts Ltd.* (1986) 1 SCC 264 (supra) the financial institutions, which held 52% shares in Escorts Ltd., a public company, used their voting power to remove non-executive directors to ensure that Escorts Ltd. did not pursue a litigation against Reserve Bank of India and the Central Government. The Supreme Court declined to interfere with the right exercised by the financial institutions as shareholders as it was considered within their power to control the affairs of the company and exercise their voting powers as they deemed fit.

16. The fact that shareholders of a company do not interfere with the day to day functions of the company cannot lead to a conclusion that shareholders do not control the company. In my view, 'managing' a company, cannot be read as synonymous to 'controlling' a company. There is nothing in the language of Section 2(h)(d)(i) of the Act, which indicates that the appropriate government must directly control a public authority or such control must be manifested by direct interference with the day-to-day management of the company. If an appropriate government has the ability to direct the affairs of a body and exercise its dominion over its affairs, the fact that it does so by appointing its representatives as managers of the said body or ensuring that its representatives are so appointed, would not mean that the body is not controlled by the appropriate government. The test as laid down by the Supreme Court in *Thalappalam Service Cooperative Bank Limited and Others v. State of Kerala* ((2013) 16 SCC 82) (supra) is the qualitative test; the control exercised by an appropriate government, which is restricted only to ensuring regulatory compliance, would not make a body a public authority under section 2(h) of the Act. However, if the control of an appropriate government is pervading and not restricted to enforcing regulatory compliance, the body controlled by the appropriate government would be a public authority.

17. The Supreme Court in *Balmer Lawrie & Co. Ltd. & Ors v. Partha Sarathi Sen Roy & Ors.*: (2013) 8 SCC 245 held as under:-

“24. When we discuss “pervasive control”, the term “control” is taken to mean check, restraint or influence. Control is intended to regulate, and to hold in check, or to restrain from action. The word “regulate”, would mean to control or to adjust by rule, or to subject to governing principles.”

18. In *Krishak Bharti Cooperative Ltd. v. Ramesh Chander Bawa*: W.P. (C) 6129/2007, decided on: 14.05.2010, a coordinate bench of this Court held as under:-

“18. At this juncture a brief reference may be made to the legal and ordinary meanings of the word 'control'. The word 'control' has been defined in Black's Law Dictionary (6th Edn.) to mean 'power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. The ability to exercise a restraining or directing influence over something.' The Shorter Oxford English Dictionary (5th Edn.) defines it as 'the act of power of directing or regulating; command, regulating influence' or 'a means of restraining or regulating; a check; a measure adopted to regulate prices, consumption of goods etc.' In both senses therefore the key word is 'influence' and not necessarily 'domination'.”

28. The controversy to be addressed is whether vesting certain undertakings by NDDB in a wholly owned subsidiary would result in the Central Government losing control over those undertakings. In my view, the answer to this must be in the negative. It is apparent that the incorporation of the petitioner as a wholly owned subsidiary of NDDB was for the purpose of better management of certain undertakings and the petitioner was to continue functioning to further the objectives of NDDB. Plainly, NDDB is under the control of the Central government and the petitioner being a subsidiary of NDDB would be indirectly under the control of the central government.

29. A constitution bench of the Supreme Court in *CI T v. Messers Jeewanlal Limited*, Calcutta: AIR 1953 SC 473 had way back in 1953, while considering the expression “controlling interest” had observed that:

“6. In common parlance a person is said to have “a controlling interest” in a company when such a person acquires, by purchase or otherwise, the majority of the vote-carrying shares in that company, for the control of the company resides in the voting powers of its shareholders. In this sense, the directors of a company may well be regarded as having “a controlling interest” in the company when they hold and are entered in the share register as holders of the majority of the shares which, under the Articles of Association of the company, carry the right to vote. (See *Glasgow Expanded Metal Co. Ltd. v. Commissioners of Inland Revenue* [(1923) 12 Tax Cas 573] and *Commissioners of Inland Revenue v. B.W. Noble* [(1926) 12 Tax Cas 911]). It is not, however,

necessary that in order to have “a controlling interest” the person or persons who hold the majority of the vote-carrying shares must have a beneficial interest in the shares held by them. These persons may hold the shares as trustees and may even be accountable to their beneficiaries and may be brought to book for exercising their votes in breach of trust, nevertheless, as between them as shareholders and the company, they are the shareholders, and as such, have “a controlling interest” in the company. (See *Inland Revenue Commissioners v. J. Bibby & Sons Ltd.* [(1946) 14 ITR (Supp) 7] and *CI T v. Bipin Silk Mills Ltd.* [AIR 1947 Bom 45 : 14 ITR 344].) According to the facts found in the statement of the case the directors of the respondent company do not themselves hold the majority of shares which, on the contrary are registered in the name of the Aluminium Ltd. and therefore, according to the principles discussed above, they cannot be said to have “a controlling interest” in the respondent company.

30. In common parlance the expression “controlling interest” would denote the majority equity interest in a company. This concept of “controlling interest” in the context of a corporate structure consisting of holding companies and subsidiary companies was considered by the Supreme Court in *Vodafone International Holdings BV v. Union of India*: (2012) 6 SCC 613. In that case, the Court examined the issue of transfer of controlling interest in a downstream subsidiary company in India by transfer of share capital of its holding company overseas. The Income Tax Authorities sought to tax gains, which had resulted from transfer of shares of an ultimate holding company incorporated in Cayman Islands as arising in India since it resulted in the transfer of controlling interest in an Indian company. The Supreme Court recognized that acquisition of the share capital of the overseas holding company provided the acquirer a controlling interest in the downstream Indian subsidiary, however, held that controlling interest was an effect of the transaction of sale and purchase of shares and could not be taxed in India. Some of the relevant observations of the Supreme Court are quoted below:

“354. Vodafone on acquisition of the CGP share got controlling interest of 42% over HEL/VEL through voting rights through eight Mauritian subsidiaries, the same was the position of HTIL as well. On acquiring the CGP share, CGP has become a direct subsidiary of Vodafone, but both are legally independent entities. Vodafone does not own any assets of CGP. Management and the business of CGP vests in the Board of Directors of CGP but of course, Vodafone could appoint or remove members of the Board of Directors of CGP. On acquisition of CGP from HTIL, Array became an indirect subsidiary of Vodafone. Array is also a separate legal entity managed by its own Board of Directors.”

“355. Share of CGP situates in the Cayman Islands and that of Array in Mauritius. Mauritian entities which hold 42% shares in HEL became the direct and indirect subsidiaries of Array, on Vodafone purchasing the CGP share. Voting rights, controlling rights, right to manage, etc., of Mauritian companies vested in those companies. HTIL has never sold nor has Vodafone purchased any shares of either Array or the Mauritian subsidiaries, but only CGP, the share of which situates in the Cayman Islands.....”

“357. Mauritian entities being a WOS of Array, Array as a holding company can influence the shareholders of various Mauritian companies. Holding companies like CGP, Array, may exercise control over the subsidiaries, whether a WOS or otherwise by influencing the voting rights, nomination of members of the Board of Directors and so on. On transfer of shares of the holding company, the controlling interest may also pass on to the purchaser along with the shares. Controlling interest might have percolated down the line to the operating companies but that controlling interest is inherently contractual and not a property right unless otherwise provided for in the statute.....”

31. The question whether a body is “controlled” by an appropriate government in the context of section 2(h) of the Act has to be answered by considering the expression “controlled” as plainly understood in common parlance and not in a technical sense.

32. A number of business houses organize their affairs through several subsidiary companies, which are held through a holding company. It is well accepted fact that subsidiary companies are sometimes created for better and a focused management of cohesive units. This does not imply that the ultimate shareholders have ceded control over the affairs of the corporate entities or their business undertakings. The influence and control exercised by shareholders of the holding company extends not only to the holding company but also to its downstream subsidiaries. Commercially, it is well understood that control of wholly owned subsidiaries, vests with the majority shareholders of the holding company.

33. The position of the Central Government is akin to the position of shareholders of a holding company. The influence of Central Government in controlling the affairs of NDDB cannot be disputed. By virtue of Section 8(3) of the NDDB Act, the entire Board of Directors of NDDB is to be appointed by the Central Government. Thus, in this aspect, the power of Central Government is similar to that of shareholders of a company. Viewed from this perspective, it can hardly be disputed that the petitioner is a body that is under the control of the Central Government. The fact that the same is exercised by NDDB would not in any manner

dilute the Central Government's control over the petitioner. There is no reason to assume that the control of the appropriate government as contemplated under Section 2(h)(d)(i) of the Act must be a direct control and not through any other incorporated body. A body which is owned or controlled by an appropriate government would not cease to be controlled by an appropriate government only because an intermediary corporate entity is introduced for better management."

In this context learned counsel appearing for the second respondent cited a decision of this Court in Krishi Foundry Employees Union's case (supra) arising out of proceedings of liquidation of a holding company. In the said case the employees of the subsidiary company claimed inclusion of their claim in the claim of the workmen of the holding company in liquidation. This Court framed the following two questions:

- (1) the question of lifting the veil and
- (2) the right of the workmen of the subsidiary company under Section 529-A of the Companies Act.

In respect of question No.1, after considering the various decisions cited by the counsel, this Court held as follows.

"11. The company incorporated under the Companies Act is entirely different from its shareholders. It has its own name, seal and assets. It is distinct juristic person inviolable personality. Whether it is a holding company or subsidiary company, this fundamental principle of company law does not get obliterated. It remains always same. Both the companies remain distinct and independent of each other though in the case of holding company and subsidiary company the former may to some extent be inter-dependent of the latter and vice versa. It is no doubt true that the doctrine of lifting the veil has been applied in the case of holding company and subsidiary company. The same, however, is not universal principle. To a limited extent, in certain situations, the holding company was held omnipotent in the affairs of the subsidiary."

.....

"20. Applying these principles to the facts of the case on hand, it is no doubt true that undisputedly the subsidiary company was supplying its produce to the holding company. That, however, is not crucial. To start with, subsidiary was incorporated as private limited company and later converted

as public limited company and made a subsidiary of the holding company. Board of Directors were different. It is not disputed that the employees of the subsidiary company were recruited by the subsidiary company and there was no employment policy in the holding company to take employees from subsidiary either by transfer or deputation from the holding company. The stray cases where some employees were sent to holding company is not crucial unless there was any common cadre of service in both holding company and subsidiary company. Nothing is pleaded or proved that holding company stood guarantee for any of the loans raised by subsidiary company. It is not denied that secured creditors of the holding company and subsidiary company are different. Financial investments were different. Therefore, while deciding the question whether workmen and employees of the subsidiary company can be treated as such of holding company, it is not permissible to pierce the corporate veil of subsidiary company. Whether holding company has any legal obligation under industrial law or company law to safeguard the interests of the employees of the subsidiary company ? This question is next point for consideration in this case.”

Ultimately, it considered Section 529-A of the Companies Act and held that the employees of subsidiary company cannot claim to be employees of holding company. But the facts in the said case are different and the context is also different. In the said case the subsidiary company became sick and management of the affairs of the company were taken over by the APIDC by virtue of the orders passed by the Government in G.O.Ms.No.150 dated 18.02.1976 and G.O.Ms.No.151 dated 04.04.1988. Subsequently, APIDC stopped the affairs of the subsidiary company and it was ultimately wound up on 09.11.1998. Even before that, a Company Petition against the holding company for winding up was also pending as on 16.11.1991. When the workmen realised that the subsidiary company has no assets, they filed the application before the Official Liquidator under Section 529-A of the Act, which was held to be of no application to the workers of the subsidiary company seeking priority payment after the liquidation proceedings of the holding company. Hence, in that case, this Court was considering the relationship of the subsidiary company with the

holding company when the petitioner was claiming to be an employee of holding company.

In the instant case, we are examining whether the subsidiary company is an 'authority' amenable to jurisdiction under Article 226 of the Constitution of India. A perusal of the provisions of NDDB Act and the Memorandum and Articles of Association of the second respondent clearly shows the control exercised by the holding company in the affairs of the subsidiary company. Thus, it can be concluded that the holding company is having financial, functional and administrative domination under the supervision of the Central Government, though the subsidiary company is being managed by the Board of its own with its own Memorandum and Articles of Association regulating its affairs. In view of this, the second respondent is amenable to the jurisdiction of this Court under Article 226 of the Constitution of India.

Having held so with regard to maintainability of the Writ Petition, it has to be considered whether the impugned order dated 24.01.2015 is valid in law. In order to decide the said issue the following facts are necessary to be examined:

The petitioner was appointed by letter of appointment dated 02.03.2007 initially for a period of three years with effect from 28.02.2007 with a basic salary of Rs.35,000/- per month and allowances mentioned therein. It was stated that he was liable to work in any department of the Company or posted to any establishment of Indian Immunologicals Limited or of National Dairy Development Board. During the three years term of employment, the Company reserved its right to terminate his services by giving one month notice or by paying one month salary in lieu

of notice and similar right was conferred on the petitioner. The other terms and conditions as mentioned in the letter of appointment would be governed by the administrative rules of the Company as modified from time to time. It was also stated that if the services are found good and if the requirement exists, he will be offered a renewal of employment of the Company. Later on, the increment at 7% was fixed based on his performance by letter dated 10.08.2007. It was specifically stated that he would be retiring on attaining the age of 58 years in accordance with the rules and regulations of the Indian Immunologicals Limited. The compensation was further revised by letter dated 01.09.2008 with effect from 01.08.2008. A letter was issued on 01.04.2009 renewing the services of the petitioner for a further period of three years with effect from 01.04.2009, though, even by that date also the initial period of three years with effect from 28.02.2007 did not come to an end. While recommending his case for issuance of passport, it was certified that the organization is under public sector. The service of the petitioner was further renewed by letter dated 01.04.2012 for a period of three years. The notice period of one month on either side was changed to three months by letter dated 24.04.2013 in respect of employees who were on contract service. He was promoted as Manager in the grade of M-II with effect from 01.04.2013. It appears that the reversal of fortunes started from 25th June 2014 and correspondence ensued. He was asked to vacate his cabin and move to another person's cabin by e-mail dated 25.11.2014 and the petitioner protested for the same. He was excluded from monthly departmental review meetings, was demanded daily work report and casual leave applications were also rejected. His efforts to draw attention of the Managing Director did not yield any result. He

submitted a petition to the Chairperson of the Human Rights Commission on 21.12.2014 and he was transferred to Ooty plant by order dated 02.01.2015. It appears that the petitioner was hospitalised on 04th January 2015 and his wife sent a mail for cashless discharge from the hospital. Instead of helping him, a letter was issued on 06.01.2015 asking him to submit explanation for his unauthorised absence and proposing to take action under Rules 5, 9 and 11 of the CDA Rules applicable to the employees. The petitioner was asked to vacate the quarter by 15.02.2015 by letter dated 16.01.2015. He addressed a letter through e-mail to the Chairman and the Managing Director seeking appointment on 22.01.2015 as he has to undergo surgery on 23.01.2015 and it did not elicit any response. Ultimately, his services were terminated by letter dated 24.01.2015 when he was hospitalised and it was stated that in view of the same the earlier show cause notice and other correspondence was deemed to have been dropped.

Though, initially the petitioner was appointed for a period of three years effective from 28.02.2007, in view of the letter dated 10.08.2007 stating that he would be retiring on attaining the age of 58 years in accordance with rules and regulations of the second respondent company, it cannot be contended that the appointment of the petitioner is contractual. The services of the petitioner were extended from time to time with basic salary and usual allowances. Even as per the counter affidavit, the term of the petitioner comes to an end only on 31.03.2015 and the order of termination was passed much before that on 24.01.2015. In view of the subsequent correspondence after the initial letter of appointment this Court is of the opinion that the appointment of the petitioner is not contractual but a permanent employment.

The conduct, discipline and appeal rules of the second respondent company defines an “employee” as a person employed other than casual, work-charged or contingent staff but includes a person on deputation to the Indian Immunologicals Ltd. The petitioner, thus comes under the definition of the ‘employee’ and as a consequence, the procedure prescribed therein for imposing the major punishment of termination/removal from service has to be followed, if the services of the petitioner has to be terminated. On this count also the termination of the services of the petitioner is invalid.

Having come to such conclusion, it is clear that the termination of the services of the petitioner by letter dated 24.01.2015 without following any procedure is illegal and is accordingly set aside.

In view of holding the second respondent company as an authority amenable to the writ jurisdiction of this Court and the impugned letter of termination as illegal, the consequence would be to set aside the order of termination dated 24.01.2015 and the petitioner is deemed to have been continued in service with all pay and allowances attached to his post. The Writ Petition is accordingly allowed with costs of Rs.5,000/- (Rupees Five Thousand only) payable to the petitioner.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 24th November 2016
Nsr