

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On : 22.03.2018
Judgment Pronounced On : 07.05.2018

LPA 78/2018, CM APPL.7914/2018, CM APPL.7915/2018 & CM APPL.7916/2018

PRADEEP KUMAR RAGHAV Appellant

versus

**TELECOMMUNICATION CONSULTANTS
INDIA LTD.** Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Shankar K. Jha, Advocate
For the Respondent : Ms. Ekta Sikri and Ms. Jasbir Bidhuri, Advocates

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present Letters Patent Appeal under Clause 10 of the Letters Patent Act assails a judgment and order dated 08.01.2018 passed by the learned Single Judge of this Court in Writ Petition (C) No.130/2018 titled as "*Pradeep Kumar Raghav v. Telecommunication Consultants India Limited*".

2. The reliefs prayed for by the appellant in the said writ petition were as follows:

- “a) set aside the office order / letter dated 10.11.2017 and Respondent may be directed not to replace the Petitioner with another set of contractual employees;
- b) Respondent may further be directed to reinstate the Petitioner to the post already held by him either on Indian posting or Foreign posting and the salary from July, 2017 till date may be released;
- c) Respondent may be directed to regularize the service of the Petitioner in accordance with similar scheme or circular dated 16.11.2012 and 28.03.2016;
- d) pass such other or further order / orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case”

3. The brief facts leading to the filing of the present appeal are that the appellant was employed with the respondent on a contractual basis and was relieved from his duties w.e.f. 30.06.2017, after completion of his contractual period.

4. It has been vehemently urged on behalf of the appellant before us that both the Pan African E Network Project as well as the Oman Project, where he was subsequently assigned, are still in operation and, consequently, his termination during the pendency of the said projects is in violation of clause 12 and 13 of the ‘*CONTRACT OF SERVICE FOR TEMPORARY PROJECT*’ dated 11.03.2010 (hereinafter referred to as the ‘subject contract’), entered into between the parties herein.

5. Further, whilst relying upon the decision of the Hon'ble Supreme Court in ***Gridco Limited and Anr. v. Sadananda Doloï and Ors.*** reported as (2011) 15 SCC 16, it would be forcefully urged that the respondent whilst exercising its powers and discharging its function acts for public good and in public interest and, consequently, minimal requirement of public law obligations are required to be discharged by them in exercising such function. In other words, challenge to the action of the respondent is made on the ground that it is arbitrary, unfair and unreasonable and, hence, offensive to Article 14 of the Constitution of India and, resultantly, judicial review is permissible.

6. The relevant clauses of the subject contract entered into between the parties herein are as follows:

“ 9. The services of the Contractual Employee will be for a period of 1 year. If the performance of the Contractual Employee is satisfactory and there is need in the project, it can be further be extended by TCIL on the same terms & conditions.

10. The contractual employee shall not be transferred to any project other than Pan African and immediately on completion of the Project his employment shall stand automatically terminated, unless specifically assigned by the TCIL Management to any other project.

XXXXXXXX XXXXXXXX XXXXXXXX

12. The services of the Contractual Employee can be terminated as and when the project awarded to TCIL

by its client comes to an end or in case the Contractual Employee is found to be not performing his functions suitably and properly, or if he is guilty of any misconduct or breach of this agreements during the currency of the said project with a notice issued by TCIL to this effect in writing

13. Either party shall terminate this Contract by giving one calendar month's notice in writing or one calendar month's salary in lieu thereof.”

7. The respondent is a wholly owned Government of India Public Sector Enterprise under the administrative control of the Department of Telecommunications (DOT), Ministry of Communications, Government of India.

8. The relation between the appellant and the respondent herein is purely contractual, governed by the subject contract. The subject contract is terminable in nature at the instance of either of the parties by giving a month's notice or a month's salary in lieu thereof.

9. The issues that arise for consideration in the present appeal are within a very narrow compass, inasmuch as:

- i. Whether the appellant who is admittedly a contractual employee can seek specific enforcement of a contract for personal service?
- ii. Whether in a proceeding seeking specific enforcement of a contract, the court can judicially review the order relieving an employee so as to enforce the subject contract?

- iii. Whether the appellant whose contract by its very nature was terminable at the instance of either the respondent or the appellant can seek reinstatement and regularization with the respondent?

Issue No.1

10. In order to effectively adjudicate the subject dispute it would firstly be relevant to reproduce Section 14 of the Specific Relief Act, 1963, which reads as follows:

“14. Contracts not specifically enforceable.—(1) The following contracts cannot be specifically enforced, namely:—

- (a) a contract for the non-performance of which compensation in money is an adequate relief;
- (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualification or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;
- (c) a contract which is in its nature determinable;
- (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:—

- (a) where the suit is for the enforcement of a contract,—
 - (i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once: Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or
 - (ii) to take up and pay for any debentures of a company;
- (b) where the suit is for,—
 - (i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or
 - (ii) the purchase of a share of a partner in a firm;
- (c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:
Provided that the following conditions are fulfilled, namely:—
 - (i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;
 - (ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and
 - (iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.”

11. It is settled law that contract of personal service cannot be specifically enforced in light of Section 14 of the Specific Relief Act, 1963, save and except if it falls under certain exceptions as discussed in, inter alia, the

decision of the Hon'ble Supreme Court in *Executive Committee of Vaish Degree College v. Lakshmi Narain* reported as (1976) 2 SCC 58:

“ 18. On a consideration of the authorities mentioned above, it is, therefore, clear that a contract of personal service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions — (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.”

12. The Hon'ble Supreme Court in *SBI v. S.N. Goyal* reported as (2008) 8 SCC 92, reiterated the said legal position as follows:

“17. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in Section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well-recognised exceptions to this rule are:

(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the

Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of the Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief—damages or reinstatement with consequential reliefs—is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts.

(Vide *S.B. Dutt (Dr.) v. University of Delhi* [AIR 1958 SC 1050] , *U.P. Warehousing Corpn. v. Chandra Kiran Tyagi* [(1969) 2 SCC 838 : (1970) 2 SCR 250] , *Sirsi Municipality v. Cecelia Kom Francis Tellis* [(1973) 1 SCC 409 : 1973 SCC (L&S) 207 : (1973) 3 SCR 348] , *Vaish Degree College v. Lakshmi Narain* [(1976) 2 SCC 58 : 1976 SCC (L&S) 176 : (1976) 2 SCR 1006] , *J. Tiwari v. Jwala Devi Vidya Mandir* [(1979) 4 SCC 160 : 1979 SCC (L&S) 356 : AIR 1981 SC 122] and *Dipak Kumar Biswas v. Director of Public Instruction* [(1987) 2 SCC 252 : (1987) 3 ATC 505 : AIR 1987 SC 1422] .)”

13. Since neither of the aforesaid three exceptions apply to the present case, the contract of personal service cannot be sought to be specifically enforced by the appellant herein.

14. Therefore, the first issue is answered in the negative.

15. Even otherwise, in our view, the argument advanced on behalf of the appellant that before termination a notice was required to be served in terms of clause 12/13 of the subject contract, is fallacious. The present is a case where the contractual employment of the appellant with the respondent came to an end by efflux of time simpliciter and no notice was required to be served in terms of the subject contract.

Issue No.2

16. No doubt a writ court is entitled to judicially review termination order passed by a public authority in terms of the contract so as to determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality. However, the scope of such review is not pervasive. In this behalf reference may be made to the decision of the Hon'ble Supreme Court in *Gridco (supra)*, wherein it was observed as follows:

24. It was contended that the decision to terminate the contractual employment was not a fair and reasonable decision having regard to the fact that the respondent had performed well during his tenure and the requirement of the Corporation to have a Chief General Manager (HR) continued to subsist. In substance, the contention urged on behalf of the respondent was that this Court should reappraise and review the material touching the question of performance of the respondent as Chief General Manager (HR) as also the question whether the Corporation's need

for a General Manager (HR) had continued to subsist. We regret our inability to do so.

25. It is true that judicial review of matters that fall in the realm of contracts is also available before the superior courts, but the scope of any such review is not all pervasive. It does not extend to the Court substituting its own view for that taken by the decision-making authority. Judicial review and resultant interference is permissible where the action of the authority is mala fide, arbitrary, irrational, disproportionate or unreasonable but impermissible if the petitioner's challenge is based only on the ground that the view taken by the authority may be less reasonable than what is a possible alternative. The legal position is settled that judicial review is not so much concerned with the correctness of the ultimate decision as it is with the decision-making process unless of course the decision itself is so perverse or irrational or in such outrageous defiance of logic that the person taking the decision can be said to have taken leave of his senses.

26. In *Shrilekha Vidyarthi v. State of U.P.* [*Shrilekha Vidyarthi v. State of U.P.*, (1991) 1 SCC 212 : 1991 SCC (L&S) 742] the State Government had by a circular terminated the engagement of all the Government Counsel engaged throughout the State and sought to defend the same on the ground that such appointments being contractual in nature were terminable at the will of the Government. The question of reviewability of administrative action in the realm of contract was in that backdrop examined by this Court. The Court also examined whether the personality of the State Government undergoes a change after the initial appointment of the Government Counsel so as to render its action immune from judicial scrutiny. The answer was in the negative.

27. The Court held that even after the initial appointment had been made and even when the matter is in the realm of contract, the State could not cast off its personality and exercise a power unfettered by the requirements of Article 14 or claim to be governed only by private law principles applicable to private individuals. The Court observed: (*Shrilekha Vidyarthi*

case [*Shrilekha Vidyarthi v. State of U.P.*, (1991) 1 SCC 212 : 1991 SCC (L&S) 742] , SCC pp. 235-36, para 20)

“20. ... we are also clearly of the view that this power is available even without that element on the premise that after the initial appointment, the matter is purely contractual. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, can it be said that the State can thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more? We have no hesitation in saying that the personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot coexist.”

28. Recognising the difference between public and private law activities of the State, this Court reasoned that unlike private individuals, the State while exercising its powers and discharging its functions, acts for public good and in public interest. Consequently every State action has an impact on the public interest which would in turn bring in the minimal requirements of public law obligations in the discharge of such functions. The Court declared that to the extent, the challenge to State action is made on the ground of being arbitrary, unfair and unreasonable hence offensive to Article 14 of the Constitution, judicial review is permissible. The fact that the dispute fell within the domain of contractual obligations did not, declared this Court, relieve the State of its obligation to comply with the basic requirements of Article 14.

29. The Court said: (*Shrilekha Vidyarthi case* [*Shrilekha Vidyarthi v. State of U.P.*, (1991) 1 SCC 212 : 1991 SCC (L&S) 742] , SCC pp. 236-37, para 22)

“22. ... This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. *It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.*”

31. Taking note of the decision of this Court in *Shrilekha Vidyarthi case* [*Shrilekha Vidyarthi v. State of U.P.*, (1991) 1 SCC 212 : 1991 SCC (L&S) 742] this Court held that (*Issac Peter case* [*Excise Commr. v. Issac Peter*, (1994) 4 SCC 104] , SCC p. 125, para 26) there was “no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State”.

The Court said: (*Issac Peter case* [*Excise Commr. v. Issac Peter*, (1994) 4 SCC 104] , SCC p. 125, para 26)

“26. ... It was a case of termination from a post involving public element. It was a case of non-government servant holding a *public office* [Ed.: The word “public office” is emphasised in original.] , on account of which it was held to be a matter within the public law field. *This decision too does not affirm the principle now canvassed by the learned counsel* [that being of incorporating the doctrine of fairness in contracts where State is a party]. *We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State.* In such cases, *the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts.* It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides.”

32. In conclusion, the Court made it clear that the opinion expressed by it was only in the context of contracts entered into between the State and its citizens pursuant to public auction, floating of tenders or by negotiation. The Court considered it unnecessary to express any opinion about the legal position applicable to contracts entered into otherwise than by public auction, floating of tenders or negotiation.

33. In *State of Orissa v. Chandra Sekhar Mishra* [(2002) 10 SCC 583 : 2003 SCC (L&S) 878] , the respondent had been appointed as a Homeopathic Medical Officer whose services were subsequently terminated by issue of a notice. While rejecting the challenge to the termination order, the Court observed: (SCC p. 583, para 4)

“4. ... When the respondent was only a contractual employee, there could be no question of his being

granted the relief of being directed to be appointed as a regular employee.”

34. We may also refer to the decision of this Court in *Satish Chandra Anand v. Union of India* [AIR 1953 SC 250] where the petitioner, an employee of the Directorate General of Resettlement and Employment, was removed from the contractual employment after being served a notice of termination. The contract of service in that case was initially for a period of five years which was later extended. A five-Judge Bench hearing the matter, dismissed the petition, challenging the termination primarily on the ground that the petitioner could not prove a breach of a fundamental right since no right accrued to him as the whole matter rested in contract and termination of the contract did not amount to dismissal, or removal from service nor was it a reduction in rank. The Court found it to be an ordinary case of a contract being terminated by notice under one of its clauses.

35. The Court observed: (*Satish Chandra case* [AIR 1953 SC 250] , AIR p. 252, paras 10-11)

“10. There was no compulsion on the petitioner to enter into the contract he did. He was as free under the law as any other person to accept or reject the offer which was made to him. Having accepted, he still has open to him all the rights and remedies available to other persons similarly situated to enforce any rights under his contract which have been denied to him, assuming there are any, and to pursue in the ordinary courts of the land such remedies for a breach as are open to him to exactly the same extent as other persons similarly situated. He has not been discriminated against and he has not been denied the protection of any laws which others similarly situated could claim. ...

11. ... The petitioner has not been denied any opportunity of employment or of appointment. He has been treated just like any other person to whom an offer of temporary employment under these conditions was made. His grievance, when analysed, is not one of personal differentiation but is against an offer of

temporary employment on special terms as opposed to permanent employment. But of course the State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and those who chose to accept those terms and enter into the contract are bound by them, even as the State is bound.”

36. In *Parshotam Lal Dhingra v. Union of India* [AIR 1958 SC 36] this Court followed the view taken in *Satish Chandra case* [AIR 1953 SC 250] . Any reference to the case law on the subject would remain incomplete unless we also refer to the decision of the Constitution Bench of this Court in *DTC v. Mazdoor Congress* [1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213] where this Court was dealing with the constitutional validity of Regulation 9(b) that authorised termination on account of reduction in the establishment or in circumstances other than those mentioned in Clause (a) to Regulation 9(b) by service of one month's notice or pay in lieu thereof. Sawant, J. in his concurring opinion held that the provision contained the much hated rules of hire and fire reminiscent of the days of *laissez faire* and unrestrained freedom of contract and that any such rule would have no place in service conditions.

37. To the same effect was an earlier decision of this Court in *Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly* [(1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103] where the Court had refused to enforce an unfair and unreasonable contract or an unfair and unreasonable clause in a contract entered into between parties who did not have equal bargaining power.

38. A conspectus of the pronouncements of this Court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a

breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review.

39. A writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ court would do well to respect the decision under challenge.

40. Applying the above principles to the case at hand, we have no hesitation in saying that there is no material to show that there is any unreasonableness, unfairness, perversity or irrationality in the action taken by the Corporation. The Regulations governing the service conditions of the employees of the Corporation, make it clear that officers in the category above E-9 had to be appointed only on contractual basis.

41. It is also evident that the renewal of the contract of employment depended upon the perception of the management as to the usefulness of the respondent and the need for an incumbent in the position held by him. Both these aspects rested entirely in the discretion of the Corporation. The respondent was in the service of another employer before he chose to accept a contractual

employment offered to him by the Corporation which was limited in tenure and terminable by three months' notice on either side. In that view, therefore, there was no element of any unfair treatment or unequal bargaining power between the appellant and the respondent to call for an over-sympathetic or protective approach towards the latter.

42. We need to remind ourselves that in the modern commercial world, executives are engaged on account of their expertise in a particular field and those who are so employed are free to leave or be asked to leave by the employer. Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise.

43. In the result, we allow this appeal, set aside the impugned judgment and order passed by the Division Bench of the High Court of Orissa dismissing Writ Appeal No. 11 of 2003. We, however, direct that the salary and allowances if any paid to Respondent 1 pursuant to the impugned judgment shall not be recovered from him. The parties shall bear their own costs in this Court as also in the courts below.”

(Emphasis supplied)

17. Even though it has been the stand of the respondent that the PAN African E Network Project as well as the Oman Project are not in operation, which position has been sought to be disputed by the appellant; the same would be of no consequence.

18. Having considered the facts and circumstances of the present case, in our view, the action taken by the respondent in not extending the service of

the appellant does not seem to be illegal, perverse, unreasonable, unfair or irrational, so as to require the interference of this Court.

19. Merely because one Mr. Gaurav Kumar Gupta, who is stated to be similarly placed as the appellant; however is not a party hereto, has been offered an extension from 01.07.2017 to 30.06.2018; the same would not advance the case of the appellant.

20. Contractual appointments work only if the same are mutually beneficial to both the contracting parties. The appellant having been engaged on a contractual basis for a fixed term cannot now in judicial review question the perception of the respondent management about his usefulness and the decision of the latter to not extend his contract further. The appellant was well aware when he took up the employment that it was for a limited term and depending on need extendable from time to time at the discretion of the respondent.

21. We in judicial review are not required to decide whether in the given circumstances the action of the respondent in not extending his contract further and relieving him from his duties was absolutely necessary or a more appropriate course could have been taken. In light of the dictum of the Hon'ble Supreme Court in **Gridco** (supra), it is settled that Courts in judicial

review are not supposed to act as an appellate authority sitting in judgment over the termination order.

22. Therefore, we are unable to agree with the appellant that the decision of the respondent in not extending his contract was arbitrary, unfair and unreasonable and, hence, offensive to Article 14 of the Constitution of India.

Issue No.3

23. Insofar as the plea of the appellant in relation to reinstatement is concerned, it would be relevant to observe that since for the reasons discussed hereinbefore there cannot be specific performance of the subject contract, in view of Section 41(e) of the Specific Relief Act, 1963. Even an injunction cannot be granted to prevent the breach thereof, thereby, reinstating the employee.

24. For the sake of reference, Section 41 of the Specific Relief Act, 1963 is reproduced hereinbelow:

“41. Injunction when refused.—An injunction cannot be granted—

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;**
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (i) when the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court;
- (j) when the plaintiff has no personal interest in the matter.”

(Emphasis supplied)

25. Furthermore, there is no question of the appellant being regularized against the posts advertised by the respondent merely because he qualifies the minimum eligibility criteria or because he worked with the latter as a contractual employee for certain duration.

26. Before parting we would also like to make a mention of the conduct of the counsel for the appellant during the course of the hearing. Mr. Shankar K. Jha, Advocate, despite being put to notice for not reading the relevant portions of the decision sought to be relied upon by him, continued to misquote the same. Needless to state that such an attempt to mislead the

Court is unbecoming of an officer of the court and we strongly condemn it.
However, as a last opportunity, we are willing to overlook the same.

27. The present appeal is dismissed.

28. No order as to costs.

**SIDDHARTH MRIDUL
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

MAY 07, 2018
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