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**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

**WPA 1054 of 2019
With
I.A. No. CAN 1 of 2020**

**Arup Kumar Sengupta
-versus-
The State Bank of India & Ors.**

Mr. Bikramaditya Ghosh
Mr. Debarshi Dhar
Mr. Biplab Sengupta
Mr. Biswajit Biswas
...for the petitioners

Mr. Momenur Rahman
...for State Bank of India

The petitioner is a retired employee of the State Bank of India. After his retirement by an order dated 25th January, 2019 the petitioner was appointed as a facilitator for ATM management in the State Bank of India on contract basis on certain terms and conditions.

For the purpose of disposal of the instant writ petition condition No.1 in the letter of appointment is quoted below:-

“Your engagement will be for an initial period of 6 months w.e.f. 01.02.2019 and the same will be reviewed after 6 months. On successful review, your services will be extended for a maximum total period of

three years or attaining 65 years of age, whichever is earlier.”

It is also provided in the appointment letter issued by the Deputy General Manager (CM & CS), “Bank has the discretion to cancel or terminate the contract of the engagement at any time without assigning any reason whatsoever with an option of 30 days notice period or payment /surrender of remuneration in lieu thereof.”

On the above terms and conditions the petitioner was appointed as facilitator of ATM at S.F. Road Branch, Siliguri.

It is contended by the petitioner that while discharging his duties honestly and diligently the petitioner received a letter dated 15th November, 2019 issued by the Assistant General Manager (ATM-OPS) informing, inter alia, that his service has been discontinued with effect from 1st January, 2020 and he was terminated from his service.

Grievance of the petitioner is that no review of his service was made after six months of his service. No decision of any such purported Review Committee was intimated by the respondents to the petitioner and he was arbitrarily terminated.

Mr. Ghosh, learned advocate for the petitioner at the outset submits that the petitioner is a contractual employee who has been terminated. Accepting the established principle of law that the petitioner does not

enjoy any right over his service as it is purely contractual in nature, it is submitted by him that a writ Court is entitled judicially to 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. In support of his contention he relies upon a decision of the Hon'ble Supreme Court in the case of **Gridco Limited and Another versus Sadananda Doloi and others** reported in **(2011) 15 Supreme Court Cases 16**.

According to the learned counsel for the petitioner, the petitioner was not offered any opportunity to submit before the appointing authority. He was not provided with the report of the Review Committee. He filed an application under the R.T.I. Act claiming the names of the members of the Review Committee and the report of the Review Committee but those reports were not supplied to him. Therefore, there is every ground to hold that termination of the petitioner was perverse and violative of the principles of natural justice.

Learned advocate for the respondent Nos. 1 to 4, on the other hand submits that as per the terms and conditions of appointment the petitioner has the discretion to cancel or terminate the contract of engagement of the petitioner at any time without

assigning any reason whatsoever with an option of 30 days' notice period. The petitioner joined his contractual employment on accepting such condition. Therefore, the petitioner cannot claim that he could not be terminated without review.

In reply thereto, Mr. Ghosh submits that the said condition must be read in conjunction with condition No.1. The condition No.1 says holding of review and determination of the issue as to whether the petitioner was performing his duties effectively and diligently. It is further pointed out by Mr. Ghosh that the petitioner was not terminated on the basis of discretionary power of the respondents. The letter of termination clearly says that he was terminated on the basis of review of his work allegedly done by the respondent bank

The learned advocate for the respondents relies on an unreported decision of the Co-Ordinate Bench of the High Court at Calcutta in **W.P. No.24019 (W) of 2019 (Prabir Kumar Sarkhel vs. State Bank of India & Ors.**, judgment delivered on 7th January, 2020). It is submitted by the learned advocate for the respondents that a Co-Ordinate Bench of this Court held that the petitioner cannot challenge the order of termination as he was in contractual service and he approached the Court after his tenure of contract was over.

Mr. Ghosh distinguished the aforesaid judgment by drawing my attention to a portion of the observation

made by the Hon'ble Judge wherefrom it is ascertained that the Bank exercised the option upon reviewing his performance and the petitioner has not challenged the performance report prepared by the Bank. In the instant case the petitioner had no opportunity to challenge the performance report prepared by the Bank because the review of his work was done behind his back and no report was supplied to him..

At the time of hearing the learned advocate for the respondent bank has produced certain documents which contain a report of the purported Review Committee dated 25th October, 2019. According to the learned advocate for the respondents the review was made by the Deputy General Manager and through other additional General Managers of the Bank. The report of the Review Committee has also been filed by him.

The learned advocate for the petitioner has raised vehement objection and submits that the aforesaid documents were not annexed in the affidavit-in-opposition filed by the respondents. The petitioner did not have any opportunity to controvert those documents. Therefore, those documents cannot be taken into consideration at this stage.

Cause of action of the petitioner arose when he was not supplied with the report of the alleged Review Committee. He challenged the foundational facts as to

whether there was at all any review of his work or not and he was illegally terminated. At the time of hearing the Bank Authority cannot produce any such document because the petitioner has every right to allege that those documents were prepared subsequently for the purpose of this case. It is also pointed out by the learned advocate for the petitioner that the petitioner was appointed by the Deputy General Manager, State Bank of India but the letter of termination was issued by the Assistant General Manager (ATM- OPS). The established rule is that an employee shall be terminated by a person who employed him and not by any other person. In the instant case, the petitioner's service was not terminated by a letter issued by the Deputy General Manager. Therefore, the letter of termination is illegal, inoperative and devoid of any force.

In reply to such submission the learned advocate for the respondents submits that the review was held by a team headed by the Deputy General Manager who appointed the petitioner. The decision of the Review Committee and consequent letter of termination was sent by the Assistant General Manager. The said letter of termination is really a communication of the decision taken by the Deputy General Manager. According to the learned advocate for the respondents any officer below the rank of Deputy General Manager can communicate the decision of the Deputy General

Manager to a sub-ordinate employee. There is no illegality in this regard.

Having heard the learned advocates for the petitioner and the respondents, I like to state at the outset that the petitioner being a contractual employee does not have any legal right to the post in question. It is specifically held in **Gridco Limited** (supra) 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.

A decision of the termination of a contractual employee can be challenged on the ground of illegality, perversity, unreasonableness, unfairness or irrationality. In the instant case the petitioner accepted the contractual employment on the terms and conditions delineated in his letter of appointment. The first condition is that his service would be reviewed after six months and if his service is found to be satisfactory, he would be permitted to continue for

three years or till attainment of 65 years of age, whichever is earlier. There is another clause that apart from the terms and conditions of his service the employer has the authority to terminate him at any point of time by giving a 30 days' notice. Though it is argued vehemently by the learned advocate for the petitioner that condition No.1 and the last condition are to be read conjointly, this Court on due consideration of the letter of appointment found that the two conditions are not mutually correlated and are taken to be consideration together. Those two conditions are completely different. The first condition contains review of service and on satisfactory report the right of the employee to continue for another three years. The last condition states about employer's authority in respect of contractual employment to terminate his service after giving notice. For such purpose no reason is required to be cited.

In the instant case, however, the petitioner was terminated after conducting review. This is the consistent plea taken by the respondents. The letter of termination also speaks of compliance of such condition. Therefore, the petitioner was not terminated upon 30 days' notice. He was terminated because the bank authority found his service to be unsatisfactory. It is true that the petitioner was not supplied with the report of the Review Committee. So, he has no scope to

submit his case before the Review Committee for consideration.

However, at this stage, the report has been produced by the bank authority. In view of such circumstances, the petitioner had no scope to deal with those reports in his affidavit-in-reply as the said documents were not affirmed and produced along with affidavit-in-opposition.

The decision of a Co-Ordinate Bench in **Prabir Kumar Sarkhel** (supra), in my considered opinion, is not applicable under the facts and circumstances of this case. The Bank exercised the option upon reviewing his performance. In the instant case the petitioner was unaware as to whether his service was reviewed or not.

Be that as it may, when the respondent has claimed in his affidavit-in-opposition though without filing any document in support of such averment that review of the petitioner's service was made and on the basis of the report he was terminated and such report is submitted at the time of final hearing of the matter, the rule of natural justice prompts me to permit the petitioner to submit a representation before the bank authority stating his case on the report of the Review Committee within 15 days from this date. The bank authority will consider his representation in accordance with law and take final decision on merit with regard to

his service. It is open for the petitioner to place his claim for remuneration for the period up to which he was actually on duty. Learned advocate for the bank authority is requested to serve a copy of the report of the Review Committee to the learned advocate for the petitioner during the course of this day.

The instant writ petition is, accordingly, disposed of with the above observation on contest, however, without costs.

With the disposal of the writ petition I.A. No. CAN 1 of 2020 is also disposed of.

(Bibek Chaudhuri, J.)