

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 2nd December, 2020
Date of decision:10th February,2021

+ **W.P.(C) 4288/2020 & CM APPLs. 15434/2020, 15435/2020**

ROBIN SHARMA Petitioner
Through: Ms. Vibha Makhija, Sr. Advocate
with Mr. A.P. Dhamija, Mr. Praveen
Gaur, Mr. J.P. Singh & Ms. Tanya
Sharma, Advocates (M:9810633614)

versus

APPAREL TRAINING AND DESIGN CENTRE THROUGH:
DIRECTOR GENERAL & ANR. Respondents
Through: Mr. Varun Singh, Ms. Deepti Arya,
Mr. Akshay Dev & Mr. Rishabh
Rana, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUDGMENT

Prathiba M. Singh, J.

1. This judgment has been pronounced through video conferencing.

Brief Background

2. The present writ petition under Article 226/227 of the Constitution of India has been filed by the Petitioner seeking appropriate writ/order or direction for setting aside the letter dated 19th June, 2020 issued by the respondent No. 2 whereby the services of the Petitioner were terminated. A total of four writ petitions have been heard together by this Court. The same were filed by four regular/permanent employees working with the Apparel Training and Design Centre ('ATDC') at various positions such as Junior

Assistant, Senior Principal, Regional Manager and Deputy Assistant.

3. Ld. Counsel for the Respondent has raised issues of maintainability on the ground that a writ petition would not lie against ATDC as it is not 'State' under Art. 12 of the Constitution of India and is also not 'Other Authority' as it does not perform a public function. Vide order dated 17th August 2020, the Apparel Export Promotion Council (hereinafter "AEPC"), of which the Respondent ATDC is a part, was impleaded as Respondent no.2. Various affidavits and documents have been filed on record by all parties. Detailed written submissions along with copies of all judgments relied upon have also been filed. All counsels consented for the matters to be finally heard as recorded in order dated 3rd September 2020. The Court accordingly heard the counsels for the parties both on the question of maintainability as also on merits.

Submissions of the Petitioner

4. Ms. Makhija, Id. Senior counsel appearing on behalf of the Petitioner firstly relies upon the judgment of a Id. Single Judge of this Court rendered in the context of the AEPC. In the said judgment, being *All India Garment Exporters Common Cause Guild And Ors v. UOI & Anr, [WP(C) 5093/1998 decided on 18 January, 2011, Delhi High Court]*, the Court held that the AEPC is performing a public function under the Exim Policy. Specific reliance was placed upon paragraphs 24, 25 and 30 of the said judgment. She submitted that though this judgment has been subsequently considered by the Id. Division Bench and overruled, the overruling only related to the merits of the petition i.e., in respect of the regulation of membership to the AEPC. On the question of public function of AEPC, the Id. Division Bench judgment was silent. She further submitted that the AEPC is a parent

organisation of the ATDC. AEPC functions as a monopolistic body and the ATDC is nothing but a unit of the AEPC which is performing a public function.

5. Ms. Makhija, thereafter, took this Court through the various clauses of the Memorandum of Association, (hereinafter “MOA”) and the Articles of Association, (hereinafter “AOA”) to show that the AEPC is fully controlled by the Central Government. Reliance was placed upon clauses 23, 24, 36, 26(5)b,42,81, 83, 88, 89, 100 (of the AOA of the AEPC). She submitted that the executive committee is appointed by the Government. There are various Government nominees. The entire funding is from the Government. The executives and employees are appointed after the prior approval of the Central Government as per clause 89. On the basis of all these clauses she submitted that the AEPC is fully controlled by the Government itself. The powers of the Central Government under clause 101 are extremely wide. The entire functioning is under the Government. She, thereafter, relied upon the minutes of meeting to show that almost all the AEPC meetings are presided over by the Government nominees.

6. Now coming to the ATDC, it was submitted by Ms. Makhija that in the balance sheet of the AEPC, specific contributions were made to set up ATDC. Reliance was placed upon the balance sheets (Income and Expenditure Account) dated 31st March 1996, 2001, 2002, 2003 and 2004 wherein the contributions made to ATDC were specifically recorded. She then relied upon the *Statement of review of working of the AEPC during the year 2008-09* which was laid in Parliament before both the Houses wherein specific reference is made to the ATDC.

7. It was submitted that the AEPC, though claimed to be a non-

governmental body, is completely under the control of the Ministry of Textiles. Reference was, thereafter, made to the MOA and AOA of the ATDC including the certificate of Registration of the ATDC as a Society on 15th February, 1991. The MoA shows that the address of the Society is at the AEPC's office in Delhi.

8. Ms. Makhija referred to the appointment letter issued to the Petitioner which shows that it is bound by the service rules of the ATDC. Once the probation period was over, the confirmation letter was given to the Petitioner. As per the service rules, in so far as temporary employees are concerned, one month notice would be required to terminate the employees but in respect of permanent employees, three months notice is required. Since the notice in the present case was only for one month and the Petitioners are permanent employees, the termination is illegal. Finally, it was submitted by Ms. Makhija that the appointing authority, as is clear from the appointment letter, was the Director and not the General Manager HR who issued the termination letter. On all these grounds, Ms. Makhija submitted that the ATDC performs a public function, the present writ is therefore maintainable and the termination is illegal.

9. Relying upon Article 12 of the Constitution of India it was submitted that the said provision has two components. One set of authorities are those which straight away constitute State under Article 12 and the second set of authorities are those, which may or may not be under the control of the Government. The term 'other authorities' is not in conjunction and even if there is no financial control of the government, if an authority performs a public function or is meant for public purpose, it would fall under Article 12. She sought to distinguish between *public purpose* and *public function* –

while the latter refers to sovereign functions, the former would include any purpose which has public impact.

10. Reference was made to the note of arguments/judgments filed on behalf of the Petitioner. Vehement reliance was placed on the judgment of the Constitution Bench of the Supreme Court in ***Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi (1975) 1 SCC 421*** wherein various tests, which are to be applied to consider the maintainability of a writ petition, have been set out. Specific reliance was placed on paragraphs 119 and 122 to argue that employment under public corporations would be public employment.

11. Reliance was also thereafter placed on the various other judgments to show the width of 'other authorities' including ***Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722*** which dealt with the Regional Engineering College, Srinagar, ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111***, which held that CSIR would be covered by 'other authorities' as also ***ZEE Telefilms Ltd. v. Union of India, (2005) 4 SCC 649***, which held that BCCI performs a public function and is amenable to writ jurisdiction under Article 226. Reliance was also placed on two judgments of a Division Bench of Delhi High Court i.e. ***All India Lawyers Union v. Govt. of Delhi, 2009 SCC Online Del 3011***, wherein Indraprastha Medical Corporation/Indraprastha Apollo Hospital has been held to be a body which is performing a public duty and ***Centre for Policy Research v. Brahma Chellaney & Ors., 2010 SCC Online Del 1101***, wherein Centre for Policy Research, which receives some government grants etc. has also been held amenable to Article 226. Reliance was also placed upon ***Janet Jeyapaul v. SRM University, (2015) 16 SCC 530*** to argue that even a

deemed university which may be privately set up, performs a public function. Ms. Makhija, submitted that the nature of education being imparted by the SRM University is of a public character and that itself makes it amenable to writ jurisdiction under Article 226. ***Hari Krishna Mandir Trust v. State of Maharashtra & Ors., 2020 SCC Online SC 631*** was also cited, in which a private mandir and a private road leading to the mandir were held to be amenable to writ jurisdiction. Therein, the Supreme Court put a positive obligation on the High Courts to exercise jurisdiction under Article 226.

12. According to Ms. Makhija, Id. Senior counsel even where there are specific terms which govern a contract of appointment, once the general service conditions are incorporated in the letter of appointment, by reference they would be governed by the employment conditions. In case of any conflict between the letter of appointment and the General Service Rules, 2011 the latter would prevail inasmuch as the appointment letter in the present case is of 1996, however, the modified General Service Rules, 2011 would keep changing from time to time and they would be prevailing over and above the letter of appointment. She further submitted that insofar as procedure for termination is concerned, the same is also governed by the General Service Rules, 2011. Without following the proper procedure laid down in accordance with law, and without laying down any criteria or policy in respect, thereof, no permanent or regular employee can be terminated. The grounds raised for challenging the termination are that:

(i) The termination is not by the appointing authority.

In the present case, the appointing authority is the Director General, however, the letter of termination has been signed by the General Manager.

This is contrary to law in view of the judgments in *Sampuran Singh v. State of Punjab 1982 3 SCC 200*. In *Jasmer Singh v. State of Haryana, 2015 4 SCC 458* it was held that Industrial Tribunal-cum-Labour Court has rightly set aside the order of termination of services of the workman and awarded the order of reinstatement with continuity of service and full back wages. According to Id. Senior counsel only the Director General could have terminated the Petitioners and not the General Manager. Reliance is also placed upon paragraphs 6 and 7 of the judgment in *Tejpal Singh(Dead) Through Legal Representatives v. Union of India 2018 14 SCC 343*.

(ii) The second ground for challenge is that notice has to be given in accordance with the Rules and Service Conditions and a disciplinary enquiry would also needed to be held. A simple reason of sizing down and financial constraints cannot be sufficient to terminate regular and permanent employees. Even if an employee has to be terminated, a proper criteria and policy has to be laid down by the organization and principal such as last come first go has to be followed. In the present case, the Petitioners have been terminated on the ground that they are legacy employees. In fact, legacy employees whose employment is permanent in nature could not have been terminated without proper show-cause notice being issued and enquiry being conducted. The issuance of one month's salary in lieu of the notice period and the deposit of the same in the bank account would not in any manner legalize the termination or prejudice the employee concerned.

13. Notifications dated 17th June, 2020 and 26th June, 2020 of the ATDC are relied upon to show that more than 200 employees have been retained by the ATDC including people in similar posts. Thus, when there is no abolition of the post, no termination would be permissible as per the

applicable rules.

14. Ld. Senior counsel, thereafter, relied upon Clauses 7 (f) of the General Service Rules, 2011 to argue that the Director General is the appointing authority for any employee in Grade A. The Petitioner is an employee who falls in Grade A. Distinction is drawn between the procedures governing temporary and permanent employees are concerned, as per Clauses 27 and 28. In the case of a temporary employee, Clause 27 permits termination as per the terms set out therein. In the case of a permanent employee, notice has to be given in writing or payment of pay and allowances for the said period if the notice falls short of three months and if the post is abolished only then without giving notice and payment of three months allowance, the termination can be brought into effect. In the case of termination, where the post is not abolished, though three months notice period is permissible under Clause 28(1), the same would have to be by following a non-arbitrary and a non-discriminatory process. The management is not permitted to pick and choose in case of employees and especially in case of permanent employees. Ld. Sr. Counsel relied upon the judgments of the Supreme Court in ***Delhi Transport Corporation v. DTC Mazdoor Congress and Ors. 1991 Supp (1) SCC 600*** as also ***Kumari Sri Lekha Vidhyarthi and Ors v. State of UP and Ors. 1991(1) SCC 212*** to argue that in case of permanent employees, the principles of Article 14 that the termination of the employee would have to be non-discriminatory, is applicable. The ATDC which is a State Authority and performing a public function has to act fairly, justly and reasonably.

15. Insofar as the further challenge to the termination is concerned, it is the submission of Id. Senior counsel that the manner in which termination was effected by the notice dated 19th June, 2020 shows that the same is

devoid of any reasons and is completely unilateral.

16. On merits, Mr. A.P. Dhamija Id. counsel for the Petitioner also made his submissions. His first submission was that the letter of appointment provides for a period of one month notice for temporary employees. However, insofar as permanent employees are concerned they are governed by the ATDC General Service Rules, 2011. Under Rule 28, the permanent employee would have to be given three months notice. Clause 6 of the appointment letter provides that the employee would be bound by the Service rules of the ATDC. Mr. A.P. Dhamija, Id. counsel supplementing the submissions of Id. Senior counsel relies on the note dated 1st June, 2020 '*Note for Approval of Terminations of certain legacy employees and retaining few employees on restructured salary in the suitable job profile*' which has been placed on record by the ATDC. He argued that a perusal of the same shows that the permanent employees i.e., legacy employees are being terminated on the ground that they are superfluous. This itself shows that such a conclusion has been arrived at without any basis and in complete breach of principles of natural justice. This is a black mark termination and, hence, without a disciplinary enquiry the same cannot be upheld by this Court. He further submitted that as per the Service Rules, the procedure for retirement is only upon superannuation and in case of regular employees nothing less than superannuation would constitute retirement. Reliance is also placed upon the judgment ***L Robert D Souza v. Executive Engineer, Southern Railway and Another 1982(1)SCC645***. Thus, regular employees who are permanently on the rolls of the Centre could not have been terminated without the three month notice period.

17. It was argued that in the case of some of the employees, the statutory

dues and one month's salary has also not been deposited and even if the same is deposited, the same would not in any manner prejudice the right of the Petitioner to challenge the termination by way of writ proceedings.

18. In view of the above it was submitted that the termination is illegal and contrary to law.

Submissions by the Respondents

19. Mr. Varun Singh, Id. Counsel appearing for the AEPC and ATDC submitted that the service rules of the ATDC are not statutory in nature. In any event, private contracts which are for employment do not fall within the service rules. The first objection raised by Mr. Varun Singh, Id. Counsel was that even under the service rules, the jurisdiction vests in the Courts in Gurugram for any challenge as the ATDC is located in Gurugram. Thus, even if ATDC is a public authority, this Court would not be the appropriate Court. He, thereafter, relied upon some clauses in the service rules to argue that even if the service rules apply, a special agreement can be made to bypass the same and in all cases it is not required to apply the said rules. He further submitted that as per the appointment letter itself, though the Petitioners may be permanent employees, the letter of appointment permitted the employer to terminate the Petitioners with 30 days' notice. He further submitted that the ATDC has 195 institutes across the country and in view of the pandemic, it has resorted to down-sizing. The General Manager HR has been given the power to terminate and accordingly, submissions in respect of illegality of the termination are not tenable.

20. He, thereafter, argued that the ATDC is not State under Article 12 of the Constitution of India and is also not a public functionary. Mr. Singh, Id. counsel submitted that the administrative, financial and overall control of the

ATDC is not with the government. The ATDC does not perform public functions. The rules are statutory.

21. Reliance was placed upon the judgment in *All India Garments Exporters Common Cause Guild And Ors (supra)*, *Apparel Export Promotion Council v. All India Garment Exporters Common Cause Guild & Ors [LPA No. 356/2011, Delhi High Court decided on 25th January, 2012]*, *K.K. Saksena v. International Commission on Irrigation and Drainage (2015) 4 SCC 670*, *Ramakrishna Mission and Ors. v. Kago Kunya and Ors (2019) 16 SCC 303* and *Balwant Rai Saluja v. Air India Limited (2014) 9 SCC 407*. The submission therefore was that the writ petition challenging the termination would not be maintainable.

22. Mr. Varun Singh, Id. Counsel sought to distinguish *SRM University (supra)* by submitting that it is a deemed university which is bound by UGC regulations and hence performs a public function.

23. He further canvassed the following three propositions:

1) That even if a body is a public body, Article 226 cannot be invoked for enforcement of a private right. He relied upon the judgment in *K.K. Saksena (supra)* which in turn quoted *The Praga Tools Corporation v. C.A. Imanuel and Ors., [1969]3 SCR 773* wherein it was categorically held that an order for reinstatement would be a private right. In the present case, he submitted that only a contractual right is sought to be enforced and therefore a writ is not maintainable.

2) That the activities of the AEPC or ATDC do not constitute public functions which are in a sovereign capacity. In order for a function to constitute a public function in a sovereign capacity, no other person should be performing such functions. He relied upon *G. Basi Reddy and Ors. v.*

International Crops Research Instt. And Ors, (2003) 4 SCC 225 wherein the organization I.C.R.I.S.A.T which is involved in conducting research was held to be not performing a public function.

3) That the rules governing the employment of the Petitioners are not statutory rules. They are purely private contracts and when these are private contracts, there is no element of public function which is involved.

24. On behalf of the AEPC, the stand of Mr. Singh, Id. counsel was that the AEPC is not a parent body of the ATDC. He submitted that even the AEPC is not under the administrative, financial or managerial control of the government. There are only three government nominees on the board of the AEPC. He relied upon the judgment of the Madras High Court in *The Apparel Export Promotion Council, New Delhi v. The Union Of India AIR 1994 Mad 57*.

25. He submitted that the earlier role of the AEPC of securing deposits from private parties and thereafter regulating exports to a foreign exchange for example, would not give a colour of public functionality to the ATDC. The ATDC itself, receives subscriptions from students, State Governments, etc. on the basis of projects which it undertakes. The total contribution by the Central Government is only Rs.21.5 lakhs which is clear from a perusal of the balance sheet for the year ending 2018-19. He further relied upon the various documents placed on record by the Petitioners themselves to argue that the following documents show that the ATDC is not performing a public function:

- i. The objectives of the ATDC are voluntary in nature (Clause 2 I MOA);

- ii. ATDC conduct activities even beyond India (Clause 2 II MOA);
- iii. There are only five government nominees out of a total 24 on the Governing Body of ATDC. As on date, there is only a single government nominee. So, there is no administrative control of the government over ATDC (Clause 5 MOA, Rules and Regulations of Society) ;
- iv. Majority of the funding is not from government, but from other sources (Clause 7a MOA, Rules and Regulations of Society).

26. Mr. Varun Singh, Id. counsel placed vehement reliance on the decisions *Parmod Kumar Yadav v. Union of India & Others [CWP No. 22063 of 2015 decided on 20th April, 2017, Punjab & Haryana High Court]* and *Pramod Kumar Yadav v. Union of India & Ors [LPA No. 1033 of 2017 decided on 28th May, 2020, Punjab & Haryana High Court]* to argue that ATDC is not a State. He submitted that ATDC operates in 21 states and, therefore, in order to maintain consistency this Court ought to follow the decision of the Punjab and Haryana High Court. He further submitted that it is the clear stand of the AEPC that it is not a functionary of the State. It is also clarified in the RTI application which was replied to by the Ministry of Textiles. He submitted that the rent is being paid by the ATDC to the AEPC on the agreed rate and so there is no financial support to the ATDC in any manner.

27. On the strength of the Judgment in *T.M.A. Pai Foundation and Ors v. State of Karnataka and Ors (2002) 8 SCC 481*, it was urged that insofar as educational institutions are concerned the jurisdiction is of the Education Tribunal. In any event writ jurisdiction is not liable to be exercised.

Reliance was placed on *Janet Jeyapaul (supra)* to argue that the Petitioner ought to approach the tribunal/ District Judge. Reliance was also placed upon the judgment in *Ramesh Ahluwalia v. State of Punjab & Ors (2012) 12 SCC 331* and *Committee of Management Delhi Public School and Anr. v. M K Gandhi & Ors (2015) 17 SCC 353* to argue that all such matters of teachers and educational institutions ought to be heard by the Educational Tribunal, that no writ petition is maintainable and the appropriate remedy is civil suit.

28. It was, thereafter, submitted that a contract of personal service is not specifically enforceable and the only remedy is to seek damages. Reliance was placed on *Executive Committee of Vaish Degree College, Shamli and Others v. Laxmi Narain and Others (1976) 2 SCC 58* and *Kailash Singh v. The Managing Committee, Mayo College, Ajmer and Others (2018) 18 SCC 216*.

29. Ld. counsel highlighted to the Court that under the General Service Rules of 2011, Rule 2(d) is clear and categorical to the effect that if there is any contract to the contrary then the service rules would not prevail and the contract would prevail. The said Rule is extracted herein below:

“General Service Rules 2011

CHAPTER 1

PRELIMINARY

2.APPLICATION

(d) Notwithstanding anything contained in Clause (1), the Board of Governors may, by agreement with any employee, make such special provisions as deemed fit regarding his conditions of service, as it may consider necessary and, thereupon, these rules shall not apply to such an employee to the extent to

which the special provisions are inconsistent therewith. The Sub Committee of the Board of Governors may also to the extent empowered, exercise these powers. “

30. It was highlighted that in the present writ, the letter of appointment contains two clauses i.e., clauses 3 and 6. These two clauses would have to be reconciled with Rule 2d of General Service Rules of 2011. A conjoint reading of the 2011 Service Rules along with clauses 3 and 6 would show that the employee can be terminated with one month's notice in terms of the contract and no notice or hearing needs to be given in respect of the same. He submitted that the principles of nature justice would not apply in the case of private employment and, therefore, it was his argument that ATDC has followed a contract in question and has terminated the services of the Petitioner.

31. Insofar as the purpose for which the Petitioner had to be removed from employment is concerned, it was his submission that it is due to a business exigency. In view of the notice, the 30 days salary and all the statutory dues are also paid and after receiving all the amounts the Petitioners are not be allowed to challenge. He submitted that the employer being a private employer, the business exigency could force the employer to terminate the services of any employee and the same is not actionable in a writ jurisdiction. Reliance was placed on ***Official Liquidator v. Dayanand and Ors 2008 10 SCC 1*** and ***State of Haryana and Ors v. Navneet Verma 2008 2 SCC 65***. Insofar as the Central Government directions to all the employers to continue employees during the pandemic are concerned, reliance was placed on the judgment of the Supreme Court in ***Ficus Pax***

Private Limited and Ors v. Union of India (UOI) and Ors 2020 4 SCC 810

that the same would not be binding on a private employer and in any case strict compliance cannot be expected of such office memorandum.

32. It was submitted that under the Rule 49 of the Service Rules, the power of the Service Rules can be relaxed to relieve him / her (of any hardship arising from the operation or in the interest of the Centre) of such provisions and employees can be relieved of the employment.

33. He then submitted that the employees in this case were not justifying the salaries which are paid to them and once they are terminated the question of redundancy can only be adjudicated in the civil suit and it is a matter of trial. The principle of last come and first go would not apply in the private company as would apply in the Government company. The question of issuance of notice and conducting of enquiry would not be required as in the present case this is not punishment, however their service have been relieved due to various reasons as contended above.

34. Ld. counsel submitted that the service rules not being statutory in nature do not override the Contract.

35. In view of the above, it was argued that the writ petition deserves to be dismissed.

Rejoinder Arguments on behalf of the Petitioner

36. On merits, Ms. Vibha Makhija, ld. Senior counsel submitted her rejoinder arguments as under:

- (i) The argument that the educational tribunal has jurisdiction is without any merit as these tribunals have jurisdiction over schools and not for societies like ATDC.
- (ii) A Civil Court is not an alternative area of efficacious / alternative

remedy inasmuch as in a Civil Court the matter would go to trial and since it is not efficacious, writ jurisdiction can be invoked.

(iii) In response to the submission that the contract would prevail over rules, Id. Senior counsel submitted that it is contrary to the judgment of the Supreme Court in ***Union Of India (UOI) and Ors. v. Arun Kumar Roy 1986 (1) SCC 675*** which clearly holds that service rules would prevail over the contract.

(iv) Insofar as Clause 2(d) of the ATDC service rules are concerned, she submitted that Clause 2(d) had no applicability to the Petitioners who are Permanent employees. The said clause would only apply to contractual employees appointed by the Board of Governors in respect of some special employment. The Petitioners being permanent employees are governed by clause 28 of the ATDC General Service Rules.

(v) The argument that natural justice need not be followed was vehemently refuted. It was submitted that unless and until the post itself is abolished or a disciplinary enquiry is underway, permanent employees have a lien over the post as per the judgment of ***Delhi Transport Corporation (supra)***.

(vi) Insofar as ***Ficus Pax Private Limited (supra)*** judgment is concerned, she submitted that it is clear that the Government circular and Office Memorandum were not set aside. The Supreme Court merely clarified that this circular or Office Memorandum would not apply in case negotiations were held between employer and the employees and the Workman agree for termination. If due to negotiations, termination ensues, then termination would be permissible. Beyond that she submitted that the Supreme Court has not set aside the circular itself.

(vii) It was submitted that under Rule 49 the power of relaxation cannot be misread in the manner as it is done. The said power would mean relaxation of each and every condition in favour of the employees but not a relaxation resulting in termination itself. The competent authority being the Director General (DG), unless and until the Rules are amended, the power of relaxation cannot be invoked for termination of the employees.

(viii) She submitted that the appointing authority in this case being DG, the termination order had not been issued by the DG and therefore the same is not approved by the DG.

(ix) Ms. Makhija, Id. counsel sought to distinguish the judgment in ***Ramakrishna Mission & Ors (supra)*** on the ground that the Ramakrishna Hospital was a hospital run by a private charitable society and hence in the facts of this case, the judgment would not be applicable. She distinguished ***K.K. Saksena (supra)*** quoted by the Petitioner on the ground that the said case involved contractor and sub-contractor whereas in the present case, the Petitioners were all direct employees of ATDC.

37. Mr. A.P. Damija, Id. Counsel for the petitioner submitted:

(i) As per the affidavit of 16th October, 2020 filed by the ATDC it is clear that the junior employees have been retained whereas senior employees like the Petitioners have been terminated.

(ii) The business exigency argument does not hold good inasmuch as the reason for termination has been held to be redundancy of the employees and not business exigency. Redundancy of employees could not have been the reason for termination and termination could not have been without enquiry.

Analysis and Findings:

38. Copious submissions have been addressed by Id. Counsels for the parties in these writs. There are two broad questions which arise in the present case:

- i) Whether the ATDC is a State within the meaning of Article 12 of the Constitution of India or other authority discharging a public function and hence amenable to writ jurisdiction under Article 226 of the Constitution of India?
- ii) Whether the termination of the Petitioners is liable to be set aside?

Analysis of documents

39. In order to answer the questions that arise, an analysis of the various documents placed on record would be essential. The Court has perused the MoA, AoA and the other documents relating to ATDC and AEPC placed on record. An analysis of documents reveals the following:

- (i) The ATDC was registered as a society on 15th February, 1991. The MOA of the ATDC shows that the main object of the society is to impart and provide practical training in apparel manufacturing technology. It has also incidental and ancillary objects.
- (ii) The governing body of the ATDC has various individuals including nominees of the Government and from private businesses. The members of the society could be any recognized exporters of the AEPC. The Chairman and Vice-Chairman of the AEPC are respectively the Chairman and Vice-Chairman of the ATDC. All members of the governing body are also to be nominated by AEPC as per the terms decided by the AEPC pursuant to a resolution of the AEPC. Out of a maximum of 24, there are 5 government nominees on the Board and constitution of the board is as under:

- Trade – 14
- Government nominees – 5
- Eminent technical persons – 4
- Director – 1

The State Government and the Central Government can appoint members on the Board. The board can delegate its powers for conduct of its affairs, however, even the said delegation would be subject to AEPC's approval.

(iii) The source of funds for the ATDC would include Central Government/State Government funds, funds by the AEPC as also various other monies received from grants, gifts, donations, fees, subscriptions, etc.

(iv) Insofar as the powers of Central Government are concerned, Clause 16 reads as under:

“16. OTHERS

a) Central Govt. Powers – Central Govt. shall have powers to give directions to the Board so to exercise and performance of the functions in matters involving Public/National interest and to ensure that the Board gives effect to such directions. This direction shall always prevail over & above any other direction issued by AEPC.

b) The Centre shall be open to the person of either sex, and of whatever race, creed, caste or class in the matter of admitting students or appointing faculty members, teachers and other staff of the Institute.

c) The AEPC may at any time enquire into the affairs of the Society or call for such reports returns and other information with respect to the property and other activities of the Society or Centre/Centres as may be required from time to time.

d) The AEPC may also at any time issue directives in regards to the affairs of the Society or Centre as it considers necessary and the Society or the Centre shall be bound to comply with such directives.”

The above clause shows that the Central Government's directions to the ATDC are binding and its powers are superior to that of the AEPC, which is the body constituting the ATDC. The overall supervisory powers are with the Central Government as is clear from clause 16(a) and the MOA of ATDC which vests with the Central Government the power to give directions to the Central Board to exercise and perform its functions in all matters involving public and national interest. The Central Government thus has deep and pervasive control over the ATDC's activities. Though, members from the trade and industry are representatives on the ATDC's Board, the vesting of such superior powers with the Central Government in the functioning of the ATDC shows that there is clear Government control in the functioning of the ATDCs.

(v) In so far as the ATDC's general activities are concerned, prior approval of the AEPC is required for all its activities.

(vi) The annual budget of the ATDC is within the limits of the budget as approved by AEPC.

(vii) A license agreement has been entered into between the AEPC and the ATDC on 17th July, 1997 wherein the land, building, furniture, equipment and other assets of the AEPC licensed to the ATDC for its use. Such land given by the AEPC to ATDC is firstly received from the Government i.e. the Ministry of Textiles. The license agreement also shows that the ATDC does

not have any power on the said land and other assets and that ATDC is, in fact, functioning under the AEPC itself.

(viii) The Ministry of Textiles has also certified vide circular dated 29th December, 1997 that the ATDC's centres are sponsored by the AEPC and is also supported by the Ministry of Textiles.

(ix) It is an admitted position on record that the AEPC is a government company under Section 25 of the Companies Act, 1956.

(x) In the annual reports of the AEPC, there is a specific mention of ATDC and all its centres and its activities.

(xi) A perusal of the publicity material circulated by the ATDC also shows that the ATDC is visibly stated to be sponsored by the Ministry of Textiles, Government of India. The said material and brochures contain speeches by the concerned Ministers as also the Secretary of Ministry of Textiles which shows that the ATDC is considered as an agency of the Ministry of Textiles.

(xii) The annual reports of the AEPC are also tabled in the Lok Sabha and Rajya Sabha. A part of the annual report also deal with the activities of the ATDC.

(xiii) The employees of the ATDC are paid salaries as per the Pay Commissions which are notified by the Central Government.

(xiv) Funds are regularly released for the running of ATDC's centres for various schemes as is evident from the documents on record including letter dated 9th February, 2011, sanctioning Rs.13.8 crores for Pan India implementation of Component I of Integrated Skill Development Scheme ISDS-2010-11.

(xv) The bank accounts of the ATDC which receive funds from the Central

Government are operated by the Chairman, AEPC and Director General and CEO of the ATDC.

(xvi) The training programmes given by the ATDC from time to time are publicized through various circulars by the Ministry of Textiles.

(xvii) Tax waivers are given to ATDC for import of machinery for imparting skill development.

(xviii) The accounts of ATDC are subjected to regular audit by the Government.

(xix) Various skill development schemes are implemented by the Government through the ATDC.

(xx) Various writ petitions have been entertained against the AEPC by this Court in the past.

(xxi) The AoA of AEPC show that the Executive Committee of the AEPC consists of various government nominees.

(xxii) The auditor's report of the AEPC is forwarded to the Central Government.

(xxiii) The Central Government approves the executives and the employees of the AEPC, in case a government employee is appointed on the council.

(xxiv) No change or alteration in the article of association can be carried out without the consent of the Central Government.

(xxv) A perusal of the balance sheet of 2018-19 shows that there are various assets owned by the ATDC which are purchased out of the grants received from the State Government, Central Government and various other funds. The said heads are described in the balance sheet as under:

- Assets purchased against own funds;
- Assets purchased against grants received from State Government;

- Assets purchased against grants received from Ministry of Textiles, Government of India;
- Assets purchased from DDUGKY which is Deen Dayal Upadhyaya Grameen Kaushalaya Yojna funds which is a skill training placement program by the Ministry of Rural Development, Government of India.

It is thus clear that a substantial portion of the assets i.e. to the tune of approximately Rs.25 crores is from the above three heads. Substantial funding of the ATDC is by AEPC or by the Central or State Governments.

40. A perusal of the General Service Rules, 2011 which govern all the employees of the ATDC shows that there are regular, contractual and permanent employees in the ATDC. The Rules apply even to daily wage workers unless exempted. The following relevant clauses are extracted below:

“3..

(l) “Appointing Authority” In relation to any post under the Centre, means the authority competent to make appointments to that post.

xxx

(o) “Employee” means a person serving the Centre as either permanent / regular or contract employee.

xxx

(r) “Probation” – An employee on probation in a post is one who has been appointed to that post for determining his/her fitness for eventual substantive appointment to that post.

xxx

w)...

x) “Permanent / Regular post” means a post carrying a definite rate of pay sanctioned without limit of time.

xi) "Temporary post" means a post carrying a definite rate of pay sanctioned for a limited time.

xii) "Tenure post" means a permanent post which an individual employee of the Centre may not hold for more than a limited period.

xxx

10. "Contractual Employee" means an employee of the Centre who is appointed on a fixed tenure for a specific assignment on consolidated emoluments or in a time scale of pay.

...

7. METHODS OF RECRUITMENT

Appointment to a post in the Centre shall be made as per Recruitment Rules Specified by the Board of Governors/Service Matters Committee, from time to time.

Recruitment to a post under the Centre may be made:

- (i) By Promotion, or
- (ii) By Lateral entry or
- (iii) By direct recruitment, or
- (iv) By transfer, or
- (v) On Specified Contract, or
- (vi) In normal case deputation/foreign service are not considered.

...

e. All the promotion vacancies in Group-A posts will be filled up on the basis of merit only.

f. Selection Committee for direct recruitment/departmental promotion of Dy. Registrars and Grade B, C and D employees of the Centre is given below:

1. Director General/An Officer nominated by DG.
2. Registrar HR
3. Deputy Registrar HR For Group B, C, D

...

APPOINTMENT OF EMPLOYEES ON DEPUTATION/FOREIGN SERVICE

...

(f) On the recommendations of the Selection Committee, the appointment is made by the Director General in all cases of employees in grade of A, B, C & D.

...

11. TEMPORARY AND PERMANENT SERVICE

(1) An employee shall be a temporary employee of the Centre until he is confirmed in a post under the Centre.

(2) An employee confirmed in a post under the Centre shall be a permanent employee of the Centre.

(3) No employee shall be confirmed in any post unless the service of the employee under the Centre is approved by the Appointing Authority.

(4) No employee shall be confirmed in any post under the Centre unless such post is a permanent one and no other employee has been confirmed in it.

...

13. ASSURED CAREER PROGRESSION SCHEME

The provisions of the assured career progression scheme, for employees other than faculty as amended from time to time applicable to the employees of Apparel Training & Design Centre, shall apply to the employees of the Centre.

41. Recruitment to the various posts of the ATDC could be by promotion, lateral entry, direct recruitment, transfer or on specified contract. The Rules clearly specify the names of the posts to which persons can be appointed and the manner in which they are to be appointed. The pay scales of each of the

employees is stipulated in the rules. All promotion vacancies in Group A are to be filled by merit only and for all Group B, C and D posts recruitment is by a Selection Committee consisting of the Director General or his nominee and two other officials. Appointment of Employees on Deputation/Foreign Service on the recommendations of the Selection Committee is made by the Director General in all cases of employees in grade A, B,C & D. A clear distinction exists between temporary and permanent service. Once an employee is confirmed, he shall be a permanent employee of the centre. In order for an employee to be a permanent employee, the appointing authority has to approve the same. Proper rules of seniority and assured career progression scheme are followed as per the rules. The pay structure is clearly specified in the Rules. Increments are also provided for.

42. Insofar as termination is concerned, the same is governed by Chapter-VIII of the rules. There is clear distinction in the manner in which a temporary employee can be terminated and a permanent employee can be terminated. In case of a temporary employee, no notice would be required. However, in the case of permanent employee, three months' notice in writing would be required. The termination can be only by the appointing authority. A perusal of the retirement provisions shows that even for the purposes of retirement, three months' notice or salaries/allowances in lieu of such notice has to be given. Detailed provision exists for suspension and undertaking of disciplinary procedures. Major and minor penalties are provided for. An enquiry has to be held by the disciplinary authority if termination is due to any cause. A proper hierarchy exists for Group A, B, C and D employees as to who constitutes the disciplinary authority, appellate authority and reviewing authority.

43. On the other hand, the case of the AEPC and ATDC in their affidavits is that:

- They are both separate entities and ATDC is a registered society functioning as an autonomous independent society;
- ATDC does not receive any funding from the AEPC nor is controlled by the Ministry of Textiles or Government of India;
- AEPC itself is not amenable to writ jurisdiction under Section 25 of The Companies Act, 1956;
- As on date there are no government nominees on ATDC's board;
- ATDC receives funding from various independent sources;
- ATDC or AEPC are not government organizations and are not amenable to writ jurisdiction;
- ATDC is not an "Other authority" under Article 226 of the Constitution.

The above distinguishing features which are highlighted to argue that ATDC is not amenable to writ jurisdiction would in the opinion of this court not have an impact on the status of ATDC. The mere fact that AEPC and ATDC are separately registered entities for ease of working would not take away the fact that they are so integrated as organisations. The further fact that there may be some external funding or that there are no Government nominees on the Board currently, would not obviate the fact that there is overall Government supervision, funding and control. The submission on behalf of the ATDC on maintainability needs to be considered in the light of the various documents analyzed above. The legal position as to whether any entity constitutes State under Article 12 or other authority under Article 226,

is now well settled by the Supreme Court.

Discussion on the case law

44. The Respondents relied upon the judgments of the High Court of Punjab and Haryana in the case of ***Parmod Kumar Yadav (supra)*** which was also upheld by the Id. Division Bench. In the said case, the Petitioner who was an employee of the ATDC was dismissed from service from employment in the ATDC. The Id. Single Judge, after considering the manner in which the ATDC was set up by AEPC and after applying ***Zee Telefilms Ltd. (supra)*** held that there is no material to show that the Central Government had any deep and pervasive control over the functioning of the ATDC. The observation of the Id. Single Judge of this Court is as under:

*“The activity in order to be amenable to writ jurisdiction must be of public character and public duty bound by enforceable statutory obligations in the performance of its duties or business. **Alas, no material has been placed on the file of this case to show positively that the Central Government has any deep and pervasive control over the functioning of the society not only in what has to be done, but the manner in which it is to be performed. Mere doles or freebies or replenishments are not enough to hold them amenable since those may be aimed only to encourage the activity, otherwise every non-government organization [NGO] may fall under the ambit of Articles 12 and 226. There must be deep, pervasive and functional control by State. Mere accountability of expenditure may not be enough since the one who parts with money may ask for rendition of accounts. The training centre gets no binding instructions from the Central Government or direct aid unless, as urged, routed through the AEPC which may qualify the***

prescriptions of Part III of the Constitution. On that connection an opinion is not expressed. ATDC only receives funds, as I was made to understand, indirectly by apportionment in the Union budget in the Ministry of Textiles, GoI or by some other financial arrangement according to fiscal discipline in policy to offset the expenditure suffered by second respondent ATDC in training students, with money diverted to defray overheads and costs of training and imparting skill development for the textile job market routed through the AEPC via the Union of India to promote clothing export to other countries. The Central Government through the Ministry of Textiles does not do business directly with the ATDC training centre other than mere mention of its existence in some of the papers on record, but those do not confer status of an authority in the training centre even within the widening scope of the ambit of the net of writ jurisdiction.

...

The Central Government in the Ministry of Textiles does not have any share holding in ATDC. The assertion to the contrary is not enough to bring the case within the fold of maintainability of the writ petition. There must be strong and cogent proof that the activity is none other than a creature of the State. One or two Officers of the Central Government on the management of the ATDC will hardly make any material difference to alter the character of the training centre as one qualifying the tests of State/person/authority bearing inimitably a public character, and one which is unequivocally an under wing, an adjunct, a limb or manifestly an organ of the State falling without convoluted ratiocination within the law in the first expansion of the law on the subject in beckon ruling in Anandi Mukta Sadguru Shree Mukta etc. v. V.R.Rudani, AIR

1989 SC 1607, 1989 (2) SCR 697, (1989) 2 SCC 691 and the law as it developed since which need not be cited to add length to the order. There is want of sufficient material on record from where it can be safely concluded that this writ is maintainable in its present form against the contesting second respondent ATDC. I would, therefore, be constrained to disallow this petition and leave the petitioner to his alternative remedies available in law. While holding in the negative, the merits of the case have not been touched upon so as not to cause any prejudice to any of the parties involved in view of the conclusion reached, in my considered view, that this writ petition does not lie since it is found, for the reasons recorded above, not entertainable in the High Court and accordingly has to be dismissed for lack of maintainability and the petitioner relegated to his remedy in a forum which is available to him in law.

In the appeal challenging the above mentioned order, the Ld. Division Bench affirmed the view taken by the Id. Single Judge and held that there was no evidence of any direct control or supervision by the Ministry of Textiles. The Id. Division Bench, further, held that the main object of the ATDC is to impart vocational training on behalf of the Ministry of Textiles to the unemployed youth of the country for the apparel industry through its centers all over India. The mere fact that the Government of India may have approved expenditure for implementation of various projects, out of which, some funds may have gone to the ATDC, would not be sufficient to hold that the writ petition is maintainable.

45. A perusal of the decisions of the High Court of Punjab and Haryana in ***Parmod Kumar Yadav (supra)*** shows that the material filed in the present case may not have been presented before the Court. The MoA and AoA as

also the various documents which are on record in these writs, appear to have not been placed before the Court. The Court thus holds that there is no material to show deep and pervasive control.

46. In *Sukhdev Singh and Ors. v. Bhagat Ram Sardar Singh Raghuvanshi (1975) 1 SCC 421*, the Supreme Court was concerned with an order for removal from service of employees in the Oil and Natural Gas Commission, Industrial Finance Corporation and Life Insurance Corporation. The Supreme Court held that a combination of state funding and an unusual degree of control over the management and policies would be critical in considering whether the organization would be state. It held that employment under public corporation would be public employment and therefore employees would have the protection which appertains to public employment.

47. In *Ajay Hasia v. Khalid Mujib Sehravardi (1981) 1 SCC 722*, the Court applied the judgment in *Ramana Dayaram Shetty v. International Airport Authority, 1979 3 SCC 489* and held that the Regional Engineering College, Sri Nagar would be amenable to writ jurisdiction. In *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology (2002) 5 SCC 111*, a Seven Judge Constitution Bench held that neither the form of the Corporation nor its ostensible autonomy would take away its character as state. Some of the factors which would be relevant in deciding whether the organization would be a state are:

- i) If the Government owns the entire share capital;
- ii) Financial assistance by the state to meet almost the entire expenditure;
- iii) Whether the Corporation enjoys a monopoly status;

- iv) Existence of a deep and pervasive state control;
- v) Functions are of public importance;
- vi) If a Government department is transferred to a Corporation.

48. In *Zee Telefilms Ltd. (supra)* the Constitution Bench of the Supreme Court distinguished between organizations which would constitute State and authorities under Article 226 of the Constitution of India. The BCCI was held to be an “other authority” owing to its monopolistic functions and was held to be amenable to writ jurisdiction under Article 226, of the Constitution of India though, not constituting State under Article 12. The relevant observation from *Zee Telefilms Ltd* is set out below:

*“234. The monopoly status of the Board is undisputed. The monopoly enjoyed by the Board need not be a statutory one so as to conform to the tests contained in Clause (6) of Article 19 of the Constitution. **It can be a de facto monopoly which has overtly or covertly received the blessings of Union of India.** The de facto monopoly of the Board is manifest as it, as a member of ICC (even if it is technically possible to float any other association), can send an Indian Team abroad or invite a foreign team onto India. In absence of recognition from the ICC, it would not be possible for any other body including the Union of India to represent India in the international Cricket events featuring competitive cricket. So would be the position in domestic cricket. The Board in view of enormity of powers is bound to follow "the doctrine of fairness and good faith in all its activities". [See Board of Control for Cricket, India and Anr. v. Netaji Cricket Club and Ors.,: AIR 2005 SC 592.*

235. The object of Part III of our Constitution is to curtail abuse of power and if by reason of the

Board's activities, fairness in action is expected, it would answer the description of "Other Authorities".

236. The decisions rendered in different jurisdictions including those of this Court clearly suggest that a body like the Board. would come within the purview of the expression "Other Authorities" contained in Article 12 of the Constitution of India. For the said purpose, a complete new look, must be bestowed on the functions and structures of the Board. A public authority, in my opinion, would be an authority which not only can regulate and control the entire sports activities in relation to cricket but also the decisive character it plays in formulating the game in all aspects. Even the Federations controlled by the State and other public bodies as also the State themselves, in view of the Board's Memorandum of Association and the Rules and Regulations framed by it, are under its complete control. Thus, it would be subject to a judicial review.

...

275. An authority necessarily need not be a creature of the statute. The powers enjoyed and duties attached to the Board need not directly flow from a statute. The Board may not be subjected to a statutory control or enjoy any statutory power but the source of power exercised by them may be traced to the legislative entries and if the rules and regulations evolved by it are akin thereto, its actions would be State actions. For the said purpose, what is necessary is to find out as to whether by reason of its nature of activities, the functions of the Board are public functions. It regulates and controls the field of cricket to the exclusion of others. Its activities impinge upon the fundamental rights of the players and other persons as also the rights, hopes and aspirations of the cricket loving public. The right to see the game of cricket live or on television also

forms an important facet of the Board. A body which makes a law for the sports in India (which otherwise is the function of the State), conferring upon itself not only enormous powers but also final say in the disciplinary matter and, thus, being responsible for making or marring a citizen's sports career, it would be an authority which answers the description of "other authorities"

...

280. Applying the tests laid down hereinbefore to the facts of the present case, the Board, in our considered opinion, said description. It discharges a public function. It has its duties towards the public. The public at large will look forward to the Board for selection of the best team to represent the country. It must manage its housekeeping in such a manner so as to fulfill the hopes and aspirations of millions. It has, thus, a duty to act fairly. It cannot act arbitrarily, whimsically or capriciously. Public interest is, thus, involved in the activities of the Board. It is, thus, a State actor.

281. We, therefore, are of the opinion that law requires to be expanded in this field and it must be held that the Board answers the description of "Other Authorities" as contained in Article 12 of the Constitution of India and satisfies the requisite legal tests, as noticed hereinbefore. It would, therefore, be a 'State'."

Even private organizations such as the Centre for policy research¹, deemed universities², have been held to be amenable to the writ jurisdiction.

49. In **Balwant Rai Saluja (supra)** the question was whether workmen engaged in statutory canteens through a contractor would be considered as employees of Air India Ltd. The Supreme Court held that there was no

¹ Centre for Policy Research (supra)

employer-employee relationship and hence a writ was not maintainable.

50. In *Apparel Export Promotion Council v. Union Of India 1993 SCC OnLine Mad 242* it was held that the Government cannot tinker with the powers of the Executive Committee of the AEPC.

51. In *Committee of Management, Delhi Public School (supra)* the Supreme Court held that the Delhi Public School (DPS) being a private school, termination of service of teachers, would not be challengeable in a writ, as DPS would not constitute State within the meaning of Article 12.

52. In *G. Basi Reddy (supra,)* the Court was dealing with the question as to whether a writ petition is maintainable against I.C.R.I.S.A.T. which was a body sponsored by UNFAO and the Government of India. The Court held that Article 226 of the Constitution of India would be maintainable only if it is shown that any fundamental right has been infringed. In the said case, the services of various employees were terminated and the Court held that a writ under Article 226 of the Constitution of India would not lie, as it was not set up by the Government and it also involved giving voluntary service to a large number of countries apart from India. It was also not controlled by the Government and not accountable to the Government. There was very minimal contribution by the Government.

53. In *Janet Jeyapaul (supra)*, the SRM University was a deemed university in which the Petitioner was working as a lecturer in the Biotechnology department, the Court held that the writ under Article 226 of the Constitution of India is maintainable and permitted the Petitioner to approach the Division Bench for a decision on merits. The Petitioner relies upon this judgment to argue that even a private deemed university

² Janet Jeyapaul (supra)

performing a public function of education, is amenable to writ jurisdiction.

54. In ***Kailash Singh (supra)***, the question was whether two employees of the institution who served for several years who were terminated, were entitled to reinstatement. The Supreme Court held that they would only be entitled to back wages. Though, the master-servant relationship exists.

55. In ***K.K. Saxena (supra)***, the Supreme Court was considering whether the International Commission on Irrigation and Drainage (ICID) would be amenable to writ jurisdiction. The Supreme Court after considering the law on the subject held that ICID was not funded by the Government and is also not discharging any public function under any statute. The Court upheld the High Court's finding that ICID does not carry out any public duty for being amenable to Article 226 of the Constitution of India.

56. In ***Official Liquidator (supra)***, the Court referred to the judgement in ***Secretary, State of Karnataka v. Uma Devi (2006)II LLJ 722 SC***. The Constitution Bench adverted its attention to financial implications of creation of extra posts and held that the Courts should not pass orders which impose unwarranted burden on the State and its instrumentalities by directing creation of particular number of posts for absorption of employees appointed. It observed that any direction by the Court for absorption of all company paid staff would be detrimental to public interest.

57. In ***Ramesh Ahluwalia (supra)***, an administrative officer working in the DAV Public School, Amritsar was removed from service after an enquiry being held. The argument was that a writ would not lie and the suit would be the alternate efficacious remedy. The Court, however, directed the matter to be listed before the Educational Tribunal for decision on merits.

58. In ***State of Haryana & Ors.(supra)***, where temporary posts were

abolished, the Supreme Court held that the contract itself permitted the abolition of posts and so long as the decision was taken in good faith, interference would not be warranted.

59. In ***T.M.A. Pai Foundation and Ors.(supra)***, the Supreme Court was dealing with minority institutions and held that the grievances of the staff and teachers, etc. ought to be relegated to Tribunals constituted especially for the said purpose.

60. In ***Ramakrishna Mission and Ors. (supra)***, recently the Supreme Court considered the question as to whether the hospital run by the Ramakrishna Mission was amenable to writ jurisdiction. The Supreme Court observed as under:

30 . Having analysed the circumstances which were relied upon by the State of Arunachal Pradesh, we are of the view that in running the hospital, Ramakrishna Mission does not discharge a public function. Undoubtedly, the hospital is in receipt of some element of grant. The grants which are received by the hospital cover only a part of the expenditure. The terms of the grant do not indicate any form of governmental control in the management or day to day functioning of the hospital. The nature of the work which is rendered by Ramakrishna Mission, in general, including in relation to its activities concerning the hospital in question is purely voluntary.

31. Before an organisation can be held to discharge a public function, the function must be of a character that is closely related to functions which are performed by the State in its sovereign capacity. There is nothing on record to indicate that the hospital performs functions which are akin to those solely performed by State authorities. Medical services are provided by private as well as State

entities. The character of the organisation as a public authority is dependent on the circumstances of the case. In setting up the hospital, the Mission cannot be construed as having assumed a public function. The hospital has no monopoly status conferred or mandated by law. That it was the first in the State to provide service of a particular dispensation does not make it an 'authority' within the meaning of Article 226. State governments provide concessional terms to a variety of organisations in order to attract them to set up establishments within the territorial jurisdiction of the State. The State may encourage them as an adjunct of its social policy or the imperatives of economic development. The mere fact that land had been provided on a concessional basis to the hospital would not by itself result in the conclusion that the hospital performs a public function. In the present case, the absence of state control in the management of the hospital has a significant bearing on our coming to the conclusion that the hospital does not come within the ambit of a public authority.

...

*33 . Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in **K K Saksena** (supra) this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.*

A perusal of the above judgment shows that it was held that the hospital of

the Ramakrishna Mission did not come within the ambit of the public authority. However, the Supreme Court further observed that contracts of purely private nature would not be subject to writ jurisdiction and the exception would be when a contract of service would be governed and regulated by a statutory provision.

61. In *All India Garment Exporters Common Cause Guild & Ors (supra)*, the writ petition was for a direction to restrain the AEPC from making any distinction between the registered exporters and member exporters by conferring certain important rights and privileges only on the member exporters. The Petitioner sought the quashing of the relevant AOA and Rules and Regulations of AEPC that brought about such classification. Further reliefs were sought in respect of the election to the Executive Committee. The Court held that the AEPC, even if it were presumed that it is not a State within the meaning of Article 12 of the Constitution, as long as AEPC exercised public functions, it was amenable to the jurisdiction of the High Court under Article 226 of the Constitution. Applying the ratio of the judgment in *Zee Telefilms (supra)*, it was held that that the AEPC exercised an important public function of ensuring the implementation of the Exim Policy which is a statutory document. The AEPC was a monopolistic body through whom every exporter was bound to export garments to the quota countries, AEPC controlled the export of garments, its decisions affected the rights and interests of garment exporters, it was a statutory body that received support from the central government. The AEPC exercised public functions and was therefore amenable to the jurisdiction of this Court under Article 226 of the Constitution. The writ petition was allowed and the Regulations of Membership made by the AEPC to the extent they were

inconsistent with the Exim Policy were held as unconstitutional and ultra vires of the Exim Policy and struck down.

62. In appeal, the Division Bench in *Apparel Export Promotion Council (supra)* observed that the judgment of the Learned Single Judge impugned was in the context of the situation as prevailing at the time of filing of the writ petition i.e. the year 1998. The subsequent changes of the year 2000 knocked off the basis laid in the writ petition for the relief claimed and granted by the learned Single Judge. It observed that the respondents/writ petitioners did not take any steps whatsoever for challenging the said amendment of Exim Policy in March 2000. The court then observed that the challenge by the writ petitioners at the time of filing of the writ petition to such classification (creating classification of voting and non-voting members), even if maintainable when the writ petition was filed, in the light of the amendments, did not survive. The appeal was allowed. The judgment of the Learned Single Judge was set aside and the writ petition was dismissed. The Division Bench did not make any observations in respect of the findings of the Ld. Single Judge relating to the role and standing of AEPC.

63. An analysis of the case law cited on behalf of both sides and applying the same to the facts of this case, clearly shows that the ATDC, though an independent society, registered under the Societies Registration Act is generally treated as a Government controlled organization. The appointments in the ATDC are made in accordance with the General Service Rules, 2011 and all the employees are governed by the said rules. The various documents also show that there is a substantial amount of funding by the Government in the setting up of the ATDC. A large portion of the

assets of the ATDC belong to the State Government, Central Government and other schemes floated by the Government which are implemented through the ATDC. Various documents also show that various educational programs including that of skill development of the Government are generally implemented through the ATDC. The powers of the Central Government under Clause 16 of the MOA of the ATDC leave no doubt that directions of the Central Government prevailed over and above any directions issued by the AEPC. This shows that the Government has deep and pervasive control over the activities of the ATDC, though, it may choose not to interfere on a daily basis.

64. Considering the various tests laid down in the case laws set out herein above, a writ petition would be maintainable against the ATDC for the following reasons:

- That there is a substantial funding by the state;
- That it performs various educational and skill development functions and also is involved in the implementation of various governmental schemes which clearly gives it a character of conducting activities of public importance;
- That the ATDC is the body vested with the authority to award B.Voc degrees for Rajiv Gandhi National Institute of Youth Development (RGNIYD). RGNIYD is an institute of national importance by the act of Parliament offering educational programmes in the area of Youth Development and ATDC claims to be the largest Pan India Vocational Training Provider for the Apparel sector providing employable skills to youth. ATDC centres are the skill knowledge provider approved by

AICTE, Ministry of Human Resource Development, Government of India.

- That the Government also exercises deep and pervasive control over the functioning of the ATDC, both through nominations on the board as also by enjoying a veto power in its activities.

65. The documents and the material which have been analyzed hereinabove do not appear to have been placed before the the Punjab and Haryana High Court, in ***Parmod Kumar Yadav (supra)***. Thus, this Court respectfully disagrees with the said view of the Punjab and Haryana High Court. The objection as to maintainability raised by the Respondents is accordingly rejected.

On merits:

66. The Petitioner was appointed a Lecturer on 19th September, 1996 and was on one year probation. During the probation period, the Petitioner could be terminated on 24 hours' notice. After confirmation, services could be terminated with one month's notice. However, Clause 6 of the appointment letter reads as under:

“xxx

6. *You will be bound by the Service Rules of the ATDC as existing or a may be framed or modified from time to time.....”*

On 16th December, 1997, the Petitioner was confirmed as Lecturer. On 27th July, 1999 the Petitioner was transferred to ATDC, Okhla, NewDelhi. On 2nd September, 2009 the Petitioner was confirmed on the post of Principal. On 1st July, 2011, the Petitioner was assigned additional responsibility of Assessment Activity. The Petitioner was given approval for being placed on

the rolls of the AEPC w.e.f 1.4.2012. On 5th July, 2012, the Petitioner was deputed with the AEPC for a period of one year. On 22nd December, 2014, the Petitioner confirmed in the grade of Addl. Chief Coordinator / Joint Director by the AEPC. On 23rd June 2015, the Petitioner was transferred from ATDC NOIDA to ATDC Okhla. On 15.4.2015, the petitioner was relieved from the AEPC and he joined back the respondent on 16.4.2015 as Sr. Principal. On 16th November, 2018, the Petitioner who was currently Regional Manager, UP (Noida - Agra) & Delhi, ATDC was assigned the responsibility of Regional Manager Delhi with additional responsibility as OSD for implementation of 'Himayat-DDU-GKY' programme. The Petitioner was served with the letter of termination on 19th June, 2020. The termination was with immediate effect i.e. from 19th June, 2020. No enquiry was held and no notice was given prior to the termination.

67. During the lock-down resulting from the outbreak of the COVID-19 pandemic, the services of the Petitioner have been terminated. The decision to terminate the services was taken by the ATDC's HRD committee in a meeting held in June, 2020. The termination letter dated 19 June 2020 reads as under:

“Referring to clause No. 3 of your appointment letter we regret to inform you that your services with ATDC stands terminated with immediate effect i.e. from the closing hours of 19th June, 2020.

You are advised to handover all the filed, documents, assets of ATDC in your custody to Ms. Manju Singh, Joint registrar National Industry Relations & Placement Officer immediately and submit "No Dues Certificate" to process your Full & Final settlement.

An amount of Rs. 154219.00 is being transferred to your Bank A/C No. 224901000001943 in lieu of notice period as per the terms of your appointment order.

We wish you Godspeed and success in all your future endeavours.”

68. The background of the termination was that a note dated 1st June, 2020 was put up which sought approval of termination of legacy employees and retention of few employees on restructured salaries in suitable job profile. The said note reads as under:

“Note for Approval of Terminations of certain Legacy employees and retaining few employees on Re-structured Salary in the suitable job profile.

Due to Extreme Financial Pressure on Cash flow and no revenue forthcoming during the lockdown from March to may be July 2020 atleast beyond, verticals, ATDC had been trying from some time to terminate the services of some regular/Legacy employees who are superfluous and to retain few reasonably good employees on restructured salary. Various options have been explored to exercise these activities which are under consideration of Management. But on passing the Judgement in Case of P.K. Yadav vs. Union of India and Others, Hon’ble High Court (2 Judges bench) of Punjab and Haryana have clearly established that ATDC is not a Government Body or Organisation and working like a private person/organization in which case rules which are applicable on Government Organisation will not be applicable on ATDC and it is working like any private body working with in the law. Hence for employment rules of private organization will be applicable in which terms of employment are governed by the

Appointment letter signed by the employee with the organization. In the appointment letter services of an employee can be terminated by giving one month Notice or Salary in lieu of Notice pay. Hence this clause may be exercised to terminate the salary of superfluous employees. As directed to exercise this option HR Department has worked out the details as per Annexure-I and II for employees who can be terminated and who can be retained on restructured Salaries.

Annexure I: List of 15 Employees to be retained on restructured salary/CTC

Annexure II: List of 15 Employees to be terminated.

For consideration, advise and Approval pls.”

The above note is signed by General Manager, HR Administration, the Executive Director, DG&CO, ATDC and the Vice-Chairman, ATDC.

69. A perusal of the above note and the decision taken thereon shows that the decision to terminate was justified on the ground of financial pressure and cash flow. The Petitioner is described as a regular/legacy employee who is superfluous. While deciding to terminate the services, the ATDC has decided to retain those employees who are described as ‘few reasonably good employees’ on restructured salaries. The ATDC has relied upon the Punjab and Haryana High Court’s judgment of **Parmod Kumar Yadav (supra)** and on the basis of the said judgement, observed that rules of a private organization would be applicable. Thus the employees were terminated by giving one month’s notice or salary in lieu of notice. The said employees have been treated as superfluous employees. The decision to terminate was taken in June, 2020 and the same was with immediate effect. One of the reasons for termination is also that the legacy employees draw

30% to 40% more salaries than other contractual employees of ATDC. The Petitioner has also been classified as redundant employee. Certain legacy employees have also been put on time bound targeted performance and under watch by the organization.

70. Both these documents clearly establish that the ATDC was conscious of the fact that the Petitioner was a regular employee who has been appointed on a permanent basis. He has been terminated without even a day's notice. The note seems to suggest that these employees are superfluous and are termed as redundant. The treatment given to the Petitioners in these writ petitions has clearly been discriminatory inasmuch as similarly situated employees on the same posts have been retained by the ATDC. The termination is also not without stigma as the Petitioners have been described as '*redundant*' employees. The entire intention appears to have been to terminate them on one ground or the other. No fair and transparent procedure was adopted. No attempt was made to enter into any negotiation with them to ask if they would be willing to accept a lower salary as was observed by the Supreme Court in *Ficus Pax Private Limited (supra)*. In the said case, the Petitioner challenged D.O. dated 20th March, 2020 and order dated 29th March 2020 issued by the Central Government which cast obligations on private employers to make full payment of wages to the employees during the period of lockdown. The vires of Section 10(2)(1) of Disaster Management Act, 2005, was also questioned. The Union of India issued the said directions as a temporary measure to mitigate the financial hardship of the employees and workers especially contractual and casual workers during the lockdown period to prevent perpetration of financial crisis. The order dated 29th March, 2020 stood withdrawn by a

subsequent order dated 17th May, 2020 as a consequence of which the obligations upon private employers to make payments was no longer in operation. The Supreme Court observed that the Government issued these directions to mitigate the financial hardship of employees including the contractual and casual workers. The Supreme Court observed that efforts ought to be made between employers and employees to sort out their differences.

71. In *Delhi Transport Corporation (supra)*, the Supreme Court has categorically held that permanent employees enjoy a lien on their post and cannot be terminated without following the procedure established by the law. Employees like the Petitioner enjoy security of tenure and having worked for more than 24 years with the ATDC, the manner in which the Petitioner has been terminated is unacceptable. Termination of permanent employees without assigning any reason in the manner described above is also arbitrary and discriminatory.

72. Another issue which has been raised is that the termination has been issued by a person who is lower than the appointing authority for the Petitioner. This argument may not be tenable as, a perusal of the note shows that the decision was taken at the highest level and it was a letter of communication of the decision which has been issued under the signature of the General Manager.

73. In *Kumari Shrilekha Vidyarthi (supra)*, the Supreme Court held that the termination of this nature which is arbitrary is reviewable under Article 226 of the Constitution of India. Even though the employer-employee may be governed by a contractual relationship, once there is a public element in an appointment, judicial review is permissible. The employees in the present

set of petitions are not like private employees. Their service conditions are governed by the General Service Rules, 2011 which are similar to those applicable to government employees. The ATDC does not function like a private organization. It is a body sponsored by the Ministry of Textiles, Government of India through the AEPC. Thus, the Petitioners who were regular and permanent employees, cannot be terminated in an arbitrary manner.

74. Reliance has been placed by the Respondent on the Rule 2(d) in the General Service Rules to argue that the contract would prevail over the General Service Rules. The said Rule merely recognises that special provisions stipulating conditions of service can be prescribed. Such a Rule would have application when some employees are recruited for performing certain specialised tasks etc., for whom special provisions can be made. The same would not apply in general in respect of all regular/permanent employees. In ***Union of India (UOI) and Ors. v. Arun Kumar Roy (supra)***, the question was whether a temporary government servant could be terminated as the one month's salary and allowance was not paid. The Court held that the employees were governed by Central Civil Service Temporary Service Rules, 1965 and not the order of appointment. Once an employee is appointed by a public authority, though the employment originates in a contract, it acquires a status under the service rules and would no longer be under the contract. Paragraphs 18 and 19 are relevant and are set out below:

“18. The question whether the terms embodied in the order of appointment should govern the service conditions of employees in government service or the rules governing them is not an open question now. It is now well settled that a government

servant whose appointment though originates in a contract, acquires a status and thereafter is governed by his service rules and not by the terms of contract. The powers of the Government under Article 309 to make rules, to regulate the service conditions of its employees are very wide and unfettered. These powers can be exercised unilaterally without the consent of the employees concerned. It will, therefore, be idle to contend that in the case of employees under the government, the terms of the contract of appointment should prevail over the rules governing their service conditions. The origin of government service often times is contractual. There is always an offer and acceptance, thus bringing it to being a completed contract between the government and its employees. Once appointed, a government servant acquires a status and thereafter his position is not one governed by the contract of appointment. Public law governing service conditions steps into regulate the relationship between the employer and employee. His emoluments and other service conditions are thereafter regulated by the appropriate statutory authority empowered to do so. Such regulation is permissible in law unilaterally without reciprocal consent. This Court made this clear in two Judgments rendered by two Constitution Benches of this Court in *Roshan Lal Tandon v. Union of India* and in *State of J & K v. Triloki Nath Khosa*..

19. Thus it is clear and not open to doubt that the terms and conditions of the service of an employee under the government who enters service on a contract, will once he is appointed, be governed by the rules governing his service conditions. It will not be permissible thereafter for him to rely upon the terms of contract which are not in consonance with the rules governing the

service.”

75. A perusal of the General Service Rules, 2011 which were applicable to the Petitioner and the letter of appointment shows that under the appointment letter, the Petitioner could be terminated with one month's notice or salary in lieu of one month's notice. Under the Service Rules, three months' notice was essential. Moreover, in respect of a regular employee, termination could take place without notice if the post is abolished. If the post existed, issuance of notice would be mandatory. In the present case, no notice was issued prior to the termination which was clearly contrary to the service rules. Similar posts have also not been abolished which is clear from the documents placed on record. The decision to retain some employees and to terminate some employees, has been taken in a completely arbitrary and discriminatory fashion. Considering that the ATDC is an authority performing public functions and is a public authority, challenge by the Petitioner in the present writ petition to his termination is clearly maintainable. A perusal of the note and the decision which was taken also shows that while the reason for termination arose from financial pressures, the Petitioner has been described as a 'redundant employee' earning more salary. Thus, the termination is not without stigma. Submissions have also been made to the effect that the employees junior to the Petitioner have been retained in the ATDC, which are not disputed. This Court is of the view that the ATDC is not permitted to 'pick and choose' the employees which it wishes to retain, especially in case of permanent employees.

76. The conduct of the ATDC, especially during the lock-down period when most employees would have been facing severe financial crunch, of

terminating them without even a day's notice, is contrary to law. If the primary reason for termination was a financial crunch in the organization, it was incumbent upon the ATDC to have a conversation with the employees, negotiate and arrived at some sort of settlement. No such attempt has been made by the ATDC. While this Court does not doubt that organizations like ATDC was under severe financial pressure during the lock-down period, at the same time, resorting to such termination, cannot also be upheld and legitimized.

77. In view of the above discussion, this Court holds that the writ petition is maintainable and the order of termination dated 19th June 2020 is quashed and set aside. The Respondent is accordingly directed to reinstate the Petitioner within a period of four weeks and pay all his emoluments for the previous period of June, 2020 till date within a period of four weeks thereafter.

78. The Court would like to place on record its appreciation for the detailed submissions and assistance given by the counsels in these petitions. Writ petition is allowed in the above terms.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 10, 2021
Rahul/DJ/RC