IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA NO.941 OF 2023 (O&M)
DATE OF DECISION : APRIL 03, 2024

The Indian Sugar and General Engineering Corporation, Yamuna Nagar and others

...Appellants

Versus

State of Haryana and others ...Respondents

CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA, ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Pawan Kumar Mutneja, Senior Advocate with
Mr. Viranjeet Singh Mahal, Advocate and
Ms. Suverna Mutneja, Advocate, for the appellant(s).

Mr. Deepak Balyan, Additional A.G., Haryana.

Mr. Ashutosh Gupta, Advocate
For respondent No.3.

LAPITA BANERJI, J.

Consideration in the present Letters Patent Appeal is to an order dated May 26, 2023 passed by an Hon'ble Single Judge of this Court, whereby she allowed the writ petition by setting-aside the impugned orders dated September 11, 1996 (Annexure P-8) and March 12, 1998 (Annexure P-11). Furthermore, she directed that the respondent No.3/the writ petitioner is to be *deemed* as reinstated in service from the date of termination and to be entitled to all notional benefits (pension, gratuity, leave encashment etc.), as he would have been entitled to, had he been superannuated on attaining the age of superannuation as per the prevalent Service Rules.

2. The facts of the present appeal as culled out are narrated hereinafter:-

i) The writ petitioner was appointed by the appellant-Corporation as a Labour Welfare Officer (LWO) on February 23, 1981 pursuant to a letter of appointment dated January 30, 1981. Services of LWOs are governed by the Public Welfare Officers Recruitment and Conditions of Service Rules, 1952 ('1952' Rules) and admittedly, at the time of appointment the petitioner's service conditions were also guided by the same.

ii) Vide letter dated June 13, 1995 the petitioner was given additional charge of the post of Safety Officer. In the said letter, it was stated that the petitioner would be responsible for maintenance of all the statutory and non-statutory records of safety. Apparently, the duties and responsibilities of safety officers were similar to that of LWOs.

iii) Vide order dated June 19, 1995 the petitioner was assigned additional duties of the post of Training and Safety Officer. However, the additional charge of Safety Officer stood withdrawn from the petitioner vide order dated September 28, 1995.

iv) On October 19, 1995, appellant No.2/the Executive Vice-President of the appellant company, without taking the prior approval of respondent No.2/Labour Commissioner, re-designated the writ petitioner's post as Senior Training and Development Officer (STDO).

v) The writ petitioner protested against the aforesaid action of appellant No.2 but he was assured that the said re-designation would not affect the petitioner's conditions of service in any manner. On October 31, 1995 the petitioner's salary was revised on the same scale as was admissible for the post of LWO.

vi) On July 04, 1996, the appellant No.3/The Manager, Personnel and Administration fixed the salary of the writ petitioner as consolidated amount plus perks with retrospective effect from April 1, 1996. Since the total emoluments remained the same and an assurance was given by the appellant No.3, that the writ petitioner's service conditions would not be adversely affected and no financial loss would incur to him, the petitioner did not raise any objection to the same.

vii) Vide impugned letter dated September 11, 1996 (Annexure P-8) issued by the appellant No.3, the services of the petitioner were terminated w.e.f. December, 11, 1996, without assigning any reason. The said termination was apparently done in accordance with para 3 of the letter of appointment dated January 30, 1981.

viii) Challenging the order of termination dated September 11, 1996, the petitioner filed a statutory appeal and the same was dismissed vide impugned order dated March 12, 1998 (Annexure P-11) passed by respondent No.1/Commissioner-cum-Secretary Labour and Employment Department, Haryana.

ix) Challenging the aforesaid orders dated September 11, 1996 and March 12, 1998 the petitioner filed the instant writ petition being CWP No.6937 of 1998.

3. The Hon'ble Single Judge vide her judgment dated May 26, 2023 quashed the impugned orders dated September 11, 1996 (Annexure P-8) and March 12, 1998 (Annexure P-11) based on the following findings:-

i) Termination of the petitioner could not have been done citing clause 3 of the letter of appointment by giving three months of notice period, as under clause 3, six months notice or salary in lieu thereof was required to be given, once the petitioner had completed his probationary period. Undisputedly, the petitioner's services as a LWO stood confirmed.

ii) The Commissioner-cum-Secretary, Labour and Employment Department, Haryana Government had erred while holding that in the event the petitioner was aggrieved by the decision of his employer/respondent-corporation designating him as a Training Officer, in violation of Rule 7A of 1952 Rules which did not permit a Welfare Officer to perform any other duty or to hold any other post without permission of the government, he had the remedy to approach the sole arbitrator in terms of the appointment letter.

iii) The appellate authority failed to notice or appreciate that the additional charge was not given at the behest or asking of the petitioner and the re-designation of his post as STDO was not done at his instance and normally since an employer was in a dominant position, it would not be possible for an employee to take on the might of a person who puts food on his table. An employee in such a situation was not in a position to protest about the change of nature of his job description or a charge given to him. Furthermore, the argument by the appellant-corporation that the petitioner benefitted financially and otherwise from the post of STDO could not be established.

4. Therefore, the factum of termination of the petitioner's unblemished service of 15 years without any notice, by invocation of Clause 3 of the letter of appointment was held to be violative of the principles of natural justice. In the opinion of the Hon'ble Single Judge, the appellants could not be permitted to use Clause 3 of the letter of appointment appointing the petitioner as a LWO when they themselves changed the conditions of service unilaterally by re-designating the petitioner's post to that of STDO and replacing him with one Faqir Chand as LWO. The contention of the appellant Corporation was that since the

petitioner did not hold the post of LWO, therefore as a natural corollary the terms and conditions of the appointment letter lost its validity and could not be invoked was not accepted.

5. Furthermore, it was held that the petitioner was left in a quandary due to the acts and conduct of appellant No.1/Corporation. Even though the 1952 Rules were applicable to a person appointed as a LWO but the appellant completely disregarded the same in terminating the services of the petitioner. Under Rule 6 of the 1952 Rules, no order of punishment could have been passed against a Welfare Officer without assigning any reason on the basis of which action was proposed to be taken and the Welfare Officer was required to be given a reasonable opportunity to defend himself. Furthermore, sanction of the Labour Commissioner/ respondent No.2 was required for imposition of any punishment other than 'censure'. Admittedly, no sanction was taken from the Labour Commissioner prior to termination of the services of the petitioner. The said rule reads as under:-

> *"6. Conditions of service of welfare officers-*
>
> *(1) a Welfare Officer shall be given appropriate status corresponding to the status of the other executive heads of the factory.*
>
> *(2) The condition of service of a Welfare Officer would be the same as of the other members of the Staff of corresponding status in the factory (***).*
>
> *(3) Notwithstanding anything contained in sub-rule (2) the management may impose any one or more of the following punishment on welfare officer:-*
>
> *<u>Minor punishments</u>*
>
> *I. Censure*
>
> *II. Withholding of increments including stoppage at an efficiency bar.*
>
> *<u>Major punishments.</u>*
>
> *I. Reduction to a lower stage in the time scale.*
>
> II. *Dismissal or terminations of service in any other manner.*

Provided that an order of punishment shall be passed against the Welfare Officer unless he has been informed of the grounds on which it is proposed to take action and given a reasonable opportunity of defending himself against the action proposed to be taken in regard to him.

Provided further that the management shall not impose any punishment other than censure except with the previous concurrent of the Labour Commissioner, Haryana.

xxxx"

"4. The Labour Commissioner, Haryana before passing orders on a reference made under second proviso to sub-rule (3) shall give the welfare officer an opportunity of showing cause against the action proposed to be taken against him and if necessary, may hear the parties in person."

6. Thus, it was held that the appellant Corporation could not be permitted to blow 'hot and cold' at the same time by arguing that 1952 Rules would not be applicable to the petitioner as he had ceased to be a Labour Welfare Officer or he was re-designated as Senior Training Development Officer on one hand and on the other hand, contend that the appointment of the petitioner was terminated in accordance with Clause 3 of the letter of appointment issued to the petitioner for the post of LWO. The Hon'ble Single Judge opined that assuming the 1952 Rules were not applicable to the writ petitioner upon being re-designated as STDO, even then the principles of natural justice would come into effect which had been patently disregarded as the services of the petitioner were terminated without holding enquiry or serving a single Show Cause Notice. No reason at all was assigned as to on what basis/allegations/charges the services of the petitioner had been terminated.

SUBMISSIONS ON BEHALF OF THE APPELLANT

7. Mr. Mutneja, learned Senior Advocate appearing on behalf of the appellants primarily raised three contentions in support of the appeal which are as follows:-

i) *The contract was of personal nature and not amenable to writ jurisdiction.*

ii) *The appellant No.1/Corporation was not a 'State' within the meaning of Article 12 of the Constitution of India and thus the writ petition was not maintainable.*

iii) *The termination of the petitioner was **discharge simplicitor** and was not stigmatic thereby not requiring full scale **disciplinary proceedings.***

8. A further argument was raised that since the contract was in the nature of personal service and therefore, following Clause 10 of the letter of appointment dated January 30, 1981, all disputes/differences should have been referred to arbitration proceedings in connection with first contention. Relevant Clauses of the appointment letter are reproduced hereinafter:-

> *"XXX XXX*
> *3. You will be on probation for a period of six months from the date of joining and shall continue to be on probation till a letter of confirmation in writing is issued to you. During probationary period, either party can terminate the services by giving three months' notice or salary in lieu thereof. However, after confirmation, the services can be terminated by giving six months' notice or salary for that period in lieu of notice, by either party.*
>
> *4. You will be governed by the services rules of the company and such other rules and regulations as in force from time to time.*
>
> *XXX XXX*
>
> *7. The company will at any time during the currency of your service be entitled to terminate your services without notice, if the company finds that you wilfully disobey or fail to perform or comply with the lawful instructions given to you by the company or fail to observe proper discipline or commit breach of any of the conditions and stipulations of the service rules or are found guilty of misconduct including neglect of duty, insobriety, dishonesty, insubordination fraud or any other offence.*
>
> *XXX XXX.*
> *10. Every dispute, difference or question which may at any time arise between the parties hereto or any person claiming*

under them, touching or arising out, or in respect of this agreement, or the subject matter thereto or rights or liabilities of either parties shall be referred to the ***sole arbitration*** *of the Managing Director of the Employer company or his nominee and the decision of the Arbitrator shall be final and binding on the parties, and such reference will be governed by the Indian Arbitration Act, the provisions of which will be fully applicable in this regard."*

9. Mr. Mutneja relied on a decision of the Apex Court in ***K.K.Saksena V. International Commission on Irrigation and Drainage*** (2015) 4 SCC 670 to contend that private law obligations of State/public authorities were not enforceable through extraordinary writ jurisdiction. Contractual and commercial obligations were enforceable only by ordinary civil action and not by judicial review. The Apex Court in ***K.K.Saksena (supra)*** while referring to the decision of the England and Wales High Court in *"Hopley v. Liverpool Health Authority" (2002) EWHC 1723 (Admin)* held that whether a public body with statutory powers exercising a public function is amenable to judicial review would involve identification of three issues:

i) whether the defendant was a public body exercising statutory powers**.**
ii) whether the function being performed in exercise of those powers was a public or a private one.
iii) whether the defendant was performing a public duty owed to the claimant in the particular circumstances under consideration.

SUBMISSIONS ON BEHALF OF THE RESPONDENT/WRIT PETITIONER

10. Learned counsel appearing on behalf of respondent No.3/ petitioner vehemently argued that neither did the petitioner ask for any benefits nor any benefit was given to him for the additional charges imposed. He submitted that action of the Corporation was arbitrary, mala

fide and in gross violation of the principles of natural justice. The writ petitioner was appointed as LWO and continued to remain Safety Officer. Therefore, since he was confirmed long time back there was no question of ***discharge simplicitor*** that may be used for a person while in probation. Furthermore, he submitted that no point of maintainability was urged at the time the writ petition was admitted or heard. Punishment, if at all, could have been imposed only in terms of Statutory Rules of 1952.

ANALYSIS

11. On the first issue, this Court is of the considered view that the petitioner was on probation initially on joining service in 1981 and undisputedly his services as LWO was confirmed at a subsequent point in time. As per the terms of the appointment letter, only during the probationary period, his services could have been terminated by giving him three months' notice or salary in lieu thereof. After confirmation the petitioner had to be given six months' notice before termination or salary in lieu thereof but while terminating the petitioner's services six months' salary was not paid in lieu of such notice even though petitioner's services stood confirmed. The respondent-corporation had sought to terminate the petitioner's services by giving him three months' notice in clear violation of the appointment letter. No explanation was tendered as to why three months' notice was given to the petitioner instead of six months.

12. Under Clause 4 of the appointment letter, the petitioner was to be governed by service Rules of the company and any such Rules and Regulations as in force, from time to time. The service conditions of LWO are governed by 1952 Rules and the appointment letter also stipulates the same; The first proviso to Rule 6(2)(3) of the 1952 Rules states that no dismissal or termination of service in any other manner of LWO could be

made unless he had been informed of the grounds on which the order of punishment was proposed to be passed and reasonable opportunity of defending himself against the action proposed to be taken against him had been given. Admittedly, no Show Cause Notice was issued and no opportunity was given to the petitioner to defend himself, after 15 years of unblemished service, as noted by the Hon'ble Single Judge. Even if the argument that the writ petition was not maintainable as the petitioner-employee has sought to enforce his personal contract of service may seem attractive at the first blush but when the conditions of service are governed by statutory rules and regulations this Court cannot accept such an argument.

13. It has been held in a recent judgment by the Apex Court that where there is violation of a term or condition of a personal contract of service the same may be enforced by way of filing a writ petition when such condition is regulated by the statutory Rules or Regulations. Therefore, the argument that contract of personal service could not be enforced by way of filing of writ petition finds no merit with this Court.

14. A beneficial reference may be made to Apex Court's judgment in ***St. Mary's Education Society Vs. Rajendra Prasad Bhargava*** *(2023) 4 SCC 98.* The relevant extract is reproduced herein below:-

> *75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226,* ***either the service conditions were regulated by the statutory provisions or*** *the employer had the status of "State" within the expansive definition under*

Article 12 or it was found that the action complained of has public law element.

15. The next argument that had been raised on behalf of the appellant-Corporation was that the Corporation was not a 'State' within the meaning of Article 12 of the Constitution of India as it was a private body corporate. It is trite law that a contract of personal services could not be enforced unless it came under three exceptions, namely;

> *i) When the employee is a public servant working under the Union of India or State:*
>
> *ii) When such an employee is employed by an authority/body which is a state within the meaning of Article 12 of the Constitution of India; and*
>
> *iii) When such an employee is workmen within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.*

16. Without going into the controversy whether the Corporation discharges a public function being an agency or instrumentality of the State or the question whether the State has deep and pervasive control over the Corporation, this Court answers the issue in favour of the petitioner as not only the order of termination issued by appellant No.3 dated September 11, 1996 had been challenged in the present writ petition but also the order dated March 12, 1998 passed by the Commissioner-cum-Secretary, Labour and Employment Department, Government of Haryana has been challenged which is a statutory authority**.** It is a well settled proposition of law that any order passed by a statutory authority performing *quasi* judicial functions can be challenged in a proceeding under Article 226 of the Constitution of India and the role of the High Court is supervisory and corrective. A beneficial reference may be made to the decision of the Apex Court in ***Ashok Kumar v. Sita Ram*** reported in (2001) 4 SCC 478 where it has been

held that in order to prevent perpetuation of grave injustice the high court has the power to exercise its writ jurisdiction even though ordinarily it is not expected to interfere.

17. A beneficial reference may also be made to a judgment passed by a Co-ordinate Bench of Hon'ble Allahabad High Court in "***Synthetics & Chemicals Ltd., Fatehganj, West, Bareilly v. G.C. Kumar and others***" *1967 SCC online All 300*, wherein it was held that a writ of mandamus may be issued to a trading Corporation to compel it to serve its duty which is of public nature. Furthermore, it had been held that a post of Labour Welfare Officer is an office created under the Factories Act, 1948 and the said office is of a permanent character which is substantive in nature. Since the office of LWO is a public office, a writ of mandamus can be issued in favour of the LWO to restore him to his office. No punishment could have been imposed to LWO without intimating him the proposed action to be taken and affording him an opportunity of hearing.

18. It has also been noted in the said judgment that the order of termination of service was quasi-governmental in nature as it came buttressed by the opinion of the Chief Inspector, Factories. Therefore, it was held to be a fit case where a writ should be issued under Article 226 of the Constitution of India and the appeal of the Corporation was dismissed with costs.

19. The relevant extract of ***G.C. Kumar's case*** *(supra)*, is reproduced herein below:

> "*xxx*
>
> *27. From this review of the authorities and laws there emerge the following principles :*

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> *(1) Mandamus may issue to a trading corporation to compel it to do its duty which is of a public nature.*
>
> *(2) A duty is of a public nature if it is imposed by charter, common law or statute.*
>
> *(3) Mandamus may issue to restore a person to a corporate office if the office is of a public nature.*
>
> *(4) The office is of a public nature if it is created by a statute and the duties of the office affect the general public or a section thereof.*
>
> *(5) Art. 226 empowers the High Court to issue a writ in the nature of mandamus. The power may be exercised, keeping in regard the broad and fundamental principles which guide the issue of mandamus.*
>
> *Xxx*

31. These provisions show that the post of the Labour Welfare Officer only for some cause and with the written concurrence of the Labour Commissioner and after hearing. His duties are of a public nature because they affect the interest of a large number of workers employed in the factory. In the discharge of his duties he has to deal with persons not concerned with the factory. Accordingly, the office of the Labour Welfare Officer is a public office, and a writ of the nature of mandamus can issue to the appellant to restore G.C.Kumar to his office. It necessarily follows that the appellant owes a duty of a public nature to restore him to his office. The duty arises from Section 49 of the Act and the Factories Welfare Officers' Rules.

Xxx

33. It may be noted that the order of termination of service comes here buttressed by the opinion of the Chief Inspector of Factories and the State Government that G.C.Kumar does not hold the requisite academic qualification, and by the direction of the former that G.C.Kumar should soon be replaced by a duly qualified person. The appellant removed G.C. Kumar on account of the direction of the Chief Inspector of Factories. This gives to the impugned order of termination of service a quasi-governmental colour. In these circumstances it is a fit case where a writ, order or direction should issue under Art. 226.

Xxx"

20. With due respect, no reliance can be placed on the judgment in ***K.K.Saksena*** *(supra)* by the appellants since it has been clearly held in that case just because ICID had the function of designing, construction,

maintenance and operation of large and small irrigation works or canals, public duty could not be cast upon it as it was a private body with no State funding. Furthermore, no liability under any Statute was cast upon ICID to discharge aforesaid Public function. All the actions done by ICID were voluntary in nature and there was no obligation either statutory or public for discharge of the same. Therefore, the submissions made on behalf of the Appellant Corporation on this score cannot be accepted.

21. The third argument raised on behalf of the appellants was that the termination was ***discharge simplicitor*** and not *stigmatic*. With all due respect Mr. Mutneja's argument cannot be accepted under any stretch of imagination since the petitioner had been appointed in 1981 as LWO and on his successful completion of the period of probation, his services were undisputedly confirmed. After rendering more than 14 years of satisfactory service, additional charge of the post of Safety Officer was assigned to him and then additional duties of the post of Training and Safety Officer were assigned to him and thereafter the petitioner's post was re-designated as Senior Training and Development Officer on October 19, 1995, by the Corporation.

22. Under the 1952 Rules, the petitioner being LWO could not have been assigned any other additional duty. The conduct of the appellant-Corporation was in clear violation of statutory Rules. It also defies logic that being unsatisfied with the work of an employee, the Corporation thrusted him with additional duties/work without any proof of such request being made by the employee. Furthermore, under Rule 7A of the 1952 Rules, he could not have been re-assigned to the post of STDO without prior permission of the Labour Commissioner which the corporation failed to take. The same reads as under:-

> *"1(7A) Welfare officer not to perform certain duties-*
> *Welfare Officer shall not perform any other duties except those mentioned in rule 7 or hold any other office or post without the previous sanction in writing of the Labour Commissioner or the State Govt."*

23. The stand that the petitioner was considered to be a probationer since he was appointed as STDO in October 1995 in violation of statutory provisions and without any request from the part of the petitioner, was not only an illegal and arbitrary one but also a *mala fide* one taken in colourable exercise of power.

24. It has been contended on behalf of the appellant that the petitioner ceased to be LWO in 1995 when he was appointed as STDO and could not have been given the protection of 1952 Rules. This Court finds that appellant-Corporation has sought to terminate the services of the petitioner holding him to be a STDO while relying upon a letter of appointment of the petitioner appointing him as LWO. On one hand, it has been argued on behalf of the Corporation that since the petitioner ceased to be LWO he could not get the protection of 1952 Rules and on the other hand, seeking to rely on the purported clause 3 of the 1981 letter his services were sought to be terminated. Such action on the part of the appellants is not only arbitrary and perverse but also reeks of *mala fide* intention and colourable exercise of power.

25. The appellant-Corporation has sought to rely on the part of letter that suited their convenience and discarded that part which required them to comply with the statutory Rules. Time and again it has been reiterated by the Hon'ble Apex Court that a document is to be read as a whole and no one should be allowed to rely on only a part of a document and discard the other. The beneficial reference may be made to Hon'ble Apex Court judgment in "***Shri Nashik Panchavati Panjarpol Trust and***

others v. Chairman and Another" *2023 SCC Online SC 1046*. Relevant extract of which is reproduced herein below :

> "*xxx*
> *8. It cannot be gainsaid that as per the rules of doctrine of harmonious construction, the document has to be read as a whole and in its totality. If there is any ambiguity either patent or latent, in any of the clauses of the document, the Courts should interpret such clause in such manner which is consistent with the other clauses and with the purpose and intent of the parties executing it.*
> *Xxx"*

26. Before parting with the discussion, it may not be out of place to refer to the recent change in law in respect of arbitration proceedings. In light of the amendments made to the Arbitration and Conciliation Act, 1996, any person whose relationship with the parties or counsel or the subject matter of dispute falls under the categories mentioned in the 7th schedule, would be ineligible to be appointed as an Arbitrator, notwithstanding any prior agreement to the contrary as per Section 12 (5) of the 1996 Act, which is reproduced herein below :

> "***12. Grounds for challenge***.—
> *Xxx*
> *(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator: Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.*
>
> *Xxx*"

27. The 7th schedule of the 1996 Act is reproduced herein below :

> "***Arbitrator's relationship with the parties or counsel-***
>
> *1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.*
>
> *2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.*

3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.

4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.

5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.

6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.

7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.

8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.

9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.

10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.

11. The arbitrator is a legal representative of an entity that is a party in the arbitration.

12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.

13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.
14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

Relationship of the arbitrator to the dispute

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.
16. The arbitrator has previous involvement in the case.

Arbitrator's direct or indirect interest in the dispute

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.

18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.
19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

Explanation 1.—The term "close family member" refers to a spouse, sibling, child, parent or life partner.

Explanation 2.—The term "affiliate" encompasses all companies in one group of companies including the parent company.

Explanation 3.—For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above."

28. A beneficial reference may be placed on a judgment in "***TRF Limited v. Energo Engineering Projects Limited"*** *(2017) 8 SCC 377*, to come to the finding that for reasons other than ones recorded by the Hon'ble Single Judge, the parties could not have been referred to the sole arbitration of the Managing Director of the employer company or his nominee. The dispute resolution clause in question in ***TRF Limited*** *(supra)* reads as under :

"*xxx*
33. Resolution of dispute/arbitration

(c) All disputes which cannot be settled by mutual negotiation shall be referred to and determined by arbitration as per the Arbitration and Conciliation Act, 1996, as amended.
(d) Unless otherwise provided, any dispute or difference between the parties in connection with the agreement shall be referred to <u>sole arbitration of the Managing Director of buyer or his nominee</u>. Venue of arbitration shall be Delhi, and the arbitration shall be conducted in English language."

29. Therefore, it was held that not only the Managing Director was an ineligible arbitrator but any nominee of the Managing Director was also an ineligible arbitrator as the ineligibility strikes at the root of his power to arbitrate or get it arbitrated upon by a nominee. Therefore, this Court comes to the finding that the writ petitioner cannot be relegated to the alternative remedy of arbitration.

30. In the light of discussions made hereinabove, this Court finds the conduct of the appellants deprecatory and holds that the Hon'ble Single Judge had correctly set aside the orders dated September 11, 1996 and March 12, 1998 (Annexures P-8 and P-11).

31. The Hon'ble Single judge had also taken a practical view by directing that the petitioner would be *deemed* to be reinstated in service from the date of his termination and would be entitled to all notional benefits having been superannuated on attaining the age of superannuation, as the petitioner had already attained the age of superannuation by the date on which the judgment was passed by her. This Court finds no reason to interfere with the well reasoned order to Hon'ble Single Judge. Due to the capricious act and conduct on the part of the appellants in harassing a poor employee-respondent No.3 for no fault of his own from 1996 onwards and embroiling him in frivolous/unnecessary litigation and wasting precious judicial time, this Court dismisses the appeal with costs assessed at Rs.2 lakh to be paid to respondent No.3 within two months from the date of this order.

32. As discussed hereinabove, the appellant-Corporation was under a clear obligation to comply with the Statutory Rules of 1952 while dealing with the services of LWOs. The appellants have not only violated the Statutory Rules-while terminating the writ petitioner's service but also

violated Rule 7A of the Punjab Welfare Officer Recruitment and Conditions of Service Rules, 1952 by imposing additional duties on the LWOs/writ petitioner.

33. Accordingly appeal is dismissed and the connected applications, if any, are hereby disposed of.

(G. S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

April 03, 2024
Shalini

Whether speaking/reasoned : Yes
Whether reportable : Yes