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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 651/2023 & CM APPLs. 2521/2023, 15294/2023**

DIVAKAR NANDAN

.....Petitioner

Through: Mr. Sarvesh Rai, Mr. Shadab Khan,
Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Jagdish Chandra, CGSC with Ms.
Maanya Saxena, Mr. Siddharth Bajaj,
Advocates for R-1.
Mr. C. Mohan Rao, Senior Advocate
with Mr. Atul Batra, Mr. Kundan
Kumar Mishra, Mr. Lokesh Sharma,
Advocates for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

19.01.2026

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1. This petition under Article 226 of the Constitution assails a termination notice dated 16th December, 2022 issued by Mother Dairy Fruit and Vegetable Private Limited (Respondent No. 3). The Petitioner also seeks a declaration that Clause 5(b) of the appointment letter dated 1st April, 2010, which permits termination by either side on three months' notice or salary in lieu thereof, is unconstitutional and void.

The background

2. The Petitioner was appointed as Scientist-I in the R&D Division of Respondent No. 3 with effect from 1st April, 2010. The appointment letter



contemplated an initial probation. The appointment letter further recorded the age of superannuation as 58 years and provided, under Clause 5(b), that the employment could be terminated by either side by giving three months' notice or salary in lieu thereof.

3. By notice dated 16th December, 2022, Respondent No. 3 terminated the Petitioner's employment invoking Clause 5(b). It is not in dispute that Respondent No. 3 tendered salary in lieu of notice. The challenge is to the legal permissibility of such termination.

Submissions on behalf of the Petitioner

4. Counsel for the Petitioner urges the following grounds in support of the reliefs sought:

4.1. Petitioner's engagement was regular in character and not a short-term contractual arrangement. The appointment letter itself contemplated an initial probation of at least one year, with confirmation upon satisfactory performance. The Petitioner's services were, in fact, confirmed and thereafter the service incidents reflected a stable, continuing employment relationship, including grant of increments and benefits ordinarily associated with a permanent cadre.

4.2. The superannuation clause, which fixes retirement at 58 years, indicates that the engagement was intended to continue till retirement and was not purely project-based.

4.3. Clause 5(b), permitting termination on three months' notice or salary in lieu, is arbitrary and unconstitutional. Termination without reasons or prior opportunity violates fair procedure, particularly if Respondent No. 3 is subject to public law standards. The termination notice dated 16th December, 2022 is therefore illegal and arbitrary.



4.4. The Petitioner disputes that the appointment was project-based. Reliance is placed on the minutes of the 25th Management Committee meeting (Annexure-A) to submit that he was appointed on a regular basis for molecular plant pathology work w.e.f. 1st April, 2010. Continued engagement even after the alleged conclusion of the project indicates that the post was not treated as time-bound.

4.5. The Petitioner served for about 12 years without adverse record. The termination followed shortly after his requests for promotion and enhancement, indicating that the action was retaliatory, particularly since the notice under Clause 5(b) discloses no performance-related or disciplinary basis.

4.6. On maintainability, the Petitioner advances twofold submissions. First, Respondent No. 3 is “State” under Article 12 since Respondent No. 2 holds about 99% shareholding and exercises effective control along with Respondent No. 1. Second, even otherwise, a writ would lie where the entity performs public functions and the impugned action is arbitrary.

4.7. Respondent No. 3 is not autonomous. Reliance is placed on the statutory character of the National Dairy Development Board¹ under the NDDB Act, 1987 and Section 42 to contend that Mother Dairy is a subsidiary undertaking of NDDB, indicating administrative control even over service matters, and that the dispute is not purely private in character.

4.8. The Petitioner also seeks to bring the matter within a regulatory framework. It is urged that NDDB Officers Appointment, Pay and Allowances Regulations, 1988 govern terminations of confirmed officers, particularly Regulation 18, which contemplates recorded reasons and, where



practicable, a show cause opportunity. Thus, Clause 5(b) cannot override such a regime, and the termination, bereft of reasons and hearing, is contrary to the governing service rules.

4.9. Reliance is placed on *The Managing Director, Indian Immunologicals Limited v. Narendra Agrawal (Telangana)*² to contend that NDDDB's subsidiaries have been treated as amenable to writ jurisdiction in service matters. This Court ought to adopt the same approach, particularly where a State-linked entity terminates a long-serving employee through a bare notice clause.

Submissions on behalf of Respondents Nos. 2 and 3

5. Counsel for the Respondents oppose the petition on maintainability as well as on merits, on following grounds:

5.1. Respondent No. 3 is a private limited company incorporated under the Companies Act, 1956, having a distinct juristic personality. Its operations are commercial in nature and not related to any sovereign or statutory function. Therefore for the alleged disputes arising from a contract of employment, Petitioner's remedy, if any, lies in civil or labour fora and not under Article 226.

5.2. NDDDB is a statutory body under the NDDDB Act, 1987. It's shareholding, by itself, neither creates privity of employment nor establishes such control over day-to-day management as would justify treating NDDDB as the employer or the decision-maker for the impugned action. The Petitioner's engagement, service conditions, supervision, and any employment-related decisions arise exclusively with Respondent No. 3.

¹ "NDDDB"

² WP No. 4159 of 2015



5.3. On Article 12, the Respondents submit that even substantial shareholding does not efface corporate separateness or convert a company into an instrumentality of the State. The rights of NDDB, even as a majority shareholder, are confined to those available to a shareholder under company law. What is relevant is not ownership in the abstract, but whether there is “deep and pervasive” control by the State across the financial, functional, and administrative domains, such that the entity, in substance, acts as an arm of the Government. Respondent No. 3 is governed by its Articles of Association, and is managed through its own Board of Directors. Reliance is placed on *Electronics Corporation of India Ltd. v. Secretary, Revenue Department, Government of Andhra Pradesh*³ to reinforce the principle of separate corporate personality, even in the case of a wholly-owned subsidiary.

5.4. The narrative of a “regular post” is fallacious. The Petitioner’s appointment traces back to a project. In the 25th Management Committee meeting relating to Respondent No. 3 and the Delhi University Biotech Project held on 4th March, 2010, it was decided to appoint the Petitioner as Scientist-I for the Centre for Genetic Manipulation of Crop Plants (CGMCP) on a purely contractual basis on a cost-to-company pattern. The appointment letter dated 1st April, 2010 is the operative document.

5.5. Clause 5(b) is a mutual termination clause. The Petitioner was free to resign by giving three months’ notice or salary in lieu without assigning reasons. Correspondingly, Respondent No. 3 retained the contractual right to terminate on the same terms. The termination notice dated 16th December, 2022 is in strict conformity with this clause, and salary in lieu of notice was

³ (1999) 4 SCC 458



paid. Accordingly, the termination was a contractual discharge, not a punitive termination.

5.6. The CGMCP project concluded in 2016. The Petitioner was nonetheless continued for several years thereafter through extensions so that further research could be carried out, but this continuation did not convert the arrangement into public employment or create a statutory tenure. A letter dated 23rd August, 2021 addressed by Professor Deepak Pental to the HR Head of Respondent No. 3 is relied upon, and the Respondents emphasise that the Petitioner himself placed it on record.

5.7. The termination was as an administrative decision taken after the Petitioner was afforded a “long rope”. Once the project had ended and continued engagement was assessed as no longer necessary, Respondent No. 3 elected to end the contractual engagement. The decision falls within management’s prerogative and does not attract public law standards of review or warrant interference under Article 226.

5.8. The mala fides plea is speculative and unsupported. The petition contains no particulars that meet the legal threshold for alleging mala fides. A contractual termination, carried out exactly in terms of a mutually accepted clause, cannot be invalidated merely because the employee asserts that it followed a demand for promotion or increments.

5.9. Contractual service obligations are not enforceable by mandamus, and a writ does not ordinarily lie to enforce rights arising purely from a private contract of employment. Reliance is placed on *Binny Ltd. v. V. Sadasivan*,⁴ *Federal Bank Ltd. v. Sagar Thomas*,⁵ *K.K. Saxena v. International*

⁴ (2005) 6 SCC 657.

⁵ 2003 (12) SCC 68



Commission on Irrigation and Drainage,⁶ St. Mary's Educational Society v. Rajendra Prasad Bhargava,⁷ and Suprabhat Lala v. National Stock Exchange of India Ltd.⁸

5.10. The Telangana High Court decision is not determinative since the Supreme Court, while disposing of SLP (C) Nos. 8633-8635/2021 on 19th September, 2022 against the said decision, left questions of law open. Thus, the settled position on non-maintainability of writ in private employment disputes continues to govern the field.

Analysis and findings

Maintainability

6. This Court does not consider it necessary to render a conclusive finding on whether Respondent No. 3 answers the description of “State” within the meaning of Article 12, or is otherwise amenable to writ jurisdiction under Article 226, as, even if the issue is assumed in the Petitioner’s favour for the purposes of the present decision, the challenge still fails to satisfy the narrow and well-settled parameters that govern judicial review in matters of contractual engagement and its discontinuance. Those reasons follow.

The limits of writ review in employment disputes

7. Article 226 is couched in wide terms, but the jurisdiction remains a public law remedy. Amenability to writ jurisdiction is only the threshold. Even where a body answers the description of “State” under Article 12, or is otherwise amenable under Article 226, the petitioner must still show that the relief sought is founded on a public law obligation and that the impugned

⁶ (2015) 4 SCC 670.

⁷ (2023) 4 SCC 498



action bears a public law element. The enquiry, therefore, does not turn merely on the identity of the respondent. It turns on the nature of the duty sought to be enforced and the character of the challenged act. A writ of mandamus lies to compel performance of a public duty. It is not issued to enforce private law rights that arise purely out of contract. This distinction is reflected in the consistent line of Supreme Court decisions, including ***Federal Bank, Binny Ltd., K.K. Saksena, and St. Mary's Educational Society***, which recognise the limited, and circumspect scope of judicial review even in contractual disputes where a clear public law element is demonstrated. These principles have also been succinctly collected in the recent Division Bench decision of the Bombay High Court in ***Suprabhat Lala***.

8. The decisive touchstone, therefore, is the nature of the dispute. Where the *lis*, in substance, arises from a private bargain and the right asserted is contractual, the appropriate remedies ordinarily lie in civil or labour law, not in judicial review under Article 226.

9. There is, however, a limited qualification to the above. The Supreme Court has recognised that contractual matters are not, by that description alone, excluded from the ambit of Article 226, especially where the challenge is anchored in manifest arbitrariness, unreasonableness, or breach of public law standards. At the same time, the Court has consistently cautioned that such scrutiny operates in a narrow corridor, particularly where adjudication would require resolution of seriously disputed facts or where the relief sought is, in substance, specific enforcement of a contract of

⁸ 2025:BHC-OS:19788-DB



employment.⁹

10. In *Mohammad Jafor Ali Mollah v. Director General of Civil Aviation & Anr.*¹⁰, Division Bench of this Court relying upon the Supreme Court decisions, synthesised the governing principles and clarified that even in contractual disputes, the writ court may exercise judicial review in a narrow compass where the impugned action is vitiated by manifest arbitrariness so as to offend Article 14, or where it results in denial of the principles of natural justice.

11. Tested on the above principles, the contours of the present dispute are clear. The petition arises from a severance effected by invocation of Clause 5(b) of the appointment letter dated 1st April, 2010. That clause permits either side to bring the engagement to an end by giving three months' notice or by tendering salary in lieu of notice, without assigning reasons. It is not in dispute that Respondent No. 3 tendered salary in lieu of notice.

12. Respondent No. 3 maintains that the Petitioner was engaged on a contractual, project-linked basis; that the engagement survived thereafter only by periodic extensions; and that, once continued engagement was no longer considered necessary, the relationship was brought to an end in accordance with Clause 5(b). The Petitioner, on the other hand, seeks to characterise the termination as arbitrary and mala fide, and attempts to attract public law scrutiny by relying upon the presence of Respondent Nos. 1 and 2 and the alleged governmental imprint in the shareholding and genesis of Respondent No. 3.

⁹ *Joshi Technologies International Inc. v. Union of India* (2015) 7 SCC 728; *ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.* (2004) 3 SCC 553.

¹⁰ 2023: DHC: 4881-DB



13. Thus, on the pleadings as they stand, the impugned action is, in form and substance, traceable to a contractual stipulation governing the relationship between the parties. The Petitioner has not demonstrated that, in the matter of continuation of employment, Respondent No. 3 owed a statutory obligation or a public duty enforceable through a writ of mandamus.

14. The Petitioner has also mounted a challenge to the validity of Clause 5(b) itself, on constitutional grounds, and that challenge is addressed next.

The challenge to Clause 5(b)

15. Clause 5(b) is, in substance, a mutual notice provision. It enables either side to bring the engagement to an end by serving three months' notice or by tendering salary in lieu thereof. Clauses of this genre are a commonplace feature of contractual employment. Their mere presence does not, by itself, attract constitutional invalidity. Where the relationship is governed by contract and the employer is not shown to be bound by a statutory service code regulating tenure and termination, a challenge to such a clause generally lies outside the limited scope of judicial review under Article 226.

16. The Petitioner's reliance on the NDDB (Staff) Regulations, 1988 does not carry the matter further. Regulation 18, on its plain terms, applies to "officers" of NDDB. The Petitioner is not appointed to NDDB, but to Respondent No. 3. No material has been placed to show that NDDB's service regulations were adopted by Respondent No. 3 as binding service rules, or that appointments under Respondent No. 3 are governed by those regulations. Nor is there material to show that the Petitioner was inducted under any NDDB-regulated cadre or that the impugned action was required



to conform to NDDB's disciplinary or termination framework. In the absence of such foundational linkage, the appointment letter remains the governing instrument for the Petitioner's service conditions. Clause 5(b), therefore, operates as a valid contractual term regulating severance between the parties.

Principles of Natural Justice

17. The Court next addresses the Petitioner's submission that the impugned severance violates the principles of natural justice. The notice dated 16th December, 2022 expressly invokes Clause 5(b) of the appointment letter and records payment of salary in lieu of the stipulated notice period.

18. A plain reading of the notice shows that it is not founded on misconduct. It does not level any charge, return any adverse finding, or attribute blame. It does not refer to any disciplinary process, nor does it record that the Petitioner is being disengaged for inefficiency, breach, or culpable conduct. The notice simply enforces the contractual exit route.

19. The insistence on a prior hearing, in such a setting, rests on the assumption that the impugned action is punitive or stigmatic. That assumption is not borne out from the text and effect of the notice. The law draws a clear distinction between (i) a termination founded on misconduct, which attracts the requirements of fairness in procedure, and (ii) a termination simpliciter under a contractual notice clause, where no adjudicatory conclusion is recorded against the employee.

20. The Supreme Court has consistently held that the touchstone is the foundation of the order, not the background. Even if an employer may have been dissatisfied, or may have received complaints, or may have internally



examined the employee's performance, the action does not become punitive unless the order itself is founded on allegations of misconduct or carries a stigma, whether by express language or by necessary implication.¹¹ The motive that may have induced the employer to invoke a contractual termination clause does not, by itself, convert a discharge simpliciter into a penal termination.

21. Tested on that standard, the impugned notice is a discharge simpliciter. It is traceable to Clause 5(b); it carries salary in lieu of notice; and it does not cast any stigma or impose any penal consequence. The principles of natural justice, therefore, do not attach to such severance.

Article 14

22. In contractual matters involving the State or its instrumentalities, Article 14 scrutiny is available only within a narrow compass. Proceeding on the assumption that the Petitioner can invoke writ review in the present contractual setting, the challenge can succeed only if the impugned disengagement discloses a public law infirmity, such as manifest arbitrariness, discrimination or mala fides or extraneous considerations. At the same time, the Court does not sit in appeal over the employer's assessment, nor does it test the decision on notions of fairness divorced from the governing contractual framework.

23. In the present case, the Petitioner has not demonstrated that the invocation of Clause 5(b) suffers from any such infirmity. The termination has been effected strictly in accordance with a mutually agreed contractual stipulation. The absence of reasons in a termination notice issued under a contractual notice clause cannot, by itself, be characterised as arbitrary,

¹¹ State Of Uttar Pradesh And Anr vs Kaushal Kishore Shukla 1991 SCC (1) 691



particularly when the contract expressly permits termination without assignment of reasons. Article 14 does not mandate reasons where the contract expressly dispenses with them, unless the action is shown to be capricious, discriminatory, or colourable.

24. The Petitioner's reliance on length of service, absence of adverse record, or the proximity between his representations seeking promotion and the termination does not establish arbitrariness in the constitutional sense. Temporal proximity or perceived unfairness does not, without cogent supporting material, translate into a finding of colourable exercise of power under Article 14.

Mala fides

25. Allegations of mala fides are required to be pleaded with specificity and supported by cogent material. In the present case, the pleadings are largely inferential. No individual decision-maker has been impleaded against whom mala fides are alleged, nor is there contemporaneous material demonstrating that Clause 5(b) was invoked as a camouflage for imposing a penalty.

26. Mere assertions founded on timing or internal administrative events are insufficient to invalidate a contractual termination on the ground of mala fides.

27. For the aforesaid reasons, even proceeding on the assumption that Respondent No. 3 is amenable to writ jurisdiction, the Petitioner has failed to establish that the impugned termination is arbitrary or unreasonable so as to violate Article 14, or that it is vitiated by violation of principles of natural justice. The termination remains a contractual severance effected in accordance with Clause 5(b) of the appointment letter.



28. Respondent No. 3 has also asserted that the engagement was project-linked and that, after the project concluded, the Petitioner was continued by extensions. Whether continuation after a project ended, created a legitimate expectation of permanency would itself require a detailed factual enquiry, including examination of successive extension letters and the internal approvals. That enquiry is not suited to writ proceedings and further reinforces why the dispute must travel to the appropriate forum.

29. The reliance placed by the Petitioner on the decision of the Telangana High Court in *The Managing Director, Indian Immunologicals Limited v. Narendra Agrawal* does not advance the case. The said judgment was carried in challenge before the Supreme Court by way of SLP (C) Nos. 8633-8635/2021, which came to be dismissed by order dated 19th September, 2022. The Supreme Court expressly clarified that it had not examined the questions of law and that all questions of law were kept open. In any event, the decision turned on its own factual context, including findings regarding the nature of control, the character of employment, and the applicable service regime. In the absence of close factual and legal parity, the said decision cannot be treated as determinative of maintainability or merits in the present case.

30. For the reasons recorded above, the petition fails to satisfy the limited grounds on which interference under Article 226 is permissible in contractual service matters. The petition and pending applications are dismissed.

31. It is clarified that this order does not foreclose the Petitioner from pursuing remedies available in law before the Civil Court, if so advised. All



contentions on merits are left open for adjudication in such proceedings.

SANJEEV NARULA, J

JANUARY 19, 2026/as