Neutral Citation Number: 2023/DHC/001654

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

Judgment reserved on: 03.11.2022

% Judgment delivered on: 03.03.2023

\+ **LPA 204/2021 and C.M. Nos. 10073/2022 & 30672/2022**

DR SAMIR KUMAR DAS ..... Appellant

Through: Mr. Abhinav Ramkrishna, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondent

Through: Mr. Anurag Ahluwalia, CGSC along with Mr. Danish Faraz Khan, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The instant Letters Patent Appeal has been preferred by the Appellant against the Judgment and Order of the Ld. Single Judge dated 23.06.2021 in W.P. (C) 2209/2017 **("Impugned Order")**. Vide the Impugned Order, the Ld. Single Judge has dismissed the Writ Petition.

2. The dispute in the present case revolves around the tenure of service of the Appellant who has since passed away on 23.04.2022. He is survived by his Legal Representatives **("LRs")** and vide Order dated 13.09.2022, the Appellant's LRs were brought on record to bring these proceedings to a logical conclusion.

3. The brief facts relevant for adjudication of this instant dispute are that while the Appellant was working on the post of General Manager (CP) & Company Secretary at Project Development India Limited **("PDIL")**, the

Public Enterprises Selection Board **("PESB")** under the administrative control of the Department of Fertilizers advertised the post of Chairman and Managing Director **("CMD")** of F.C.I. Aravali Gypsum and Minerals India Limited **("FAGMIL")**.

4. Against the said advertisement, the Appellant applied for the post of CMD, FAGMIL and he was selected for the same. His appointment was confirmed for a period of 5 years through a presidential directive dated 03.03.2011, bearing letter No. 90/2/2010-HR-1. The Appellant, while working on the post of CMD, FAGMIL, was also permitted to retain lien on the post of General Manager (CP) & Company Secretary, PDIL for a period of 5 years starting on 07.03.2011, vide an Office Memorandum issued by PDIL on the same date, in consonance with the Department of Public Enterprises **("DPE")** O.M. No. 23/19/98/GL-014/DPE dated 13.01.1999.

5. The undisputed facts of the case reveal that the Appellant was appointed as CMD, FAGMIL for a period spanning from 08.03.2011 – 07.03.2016. The Appellant, however, continued to work up till 01.12.2016 and had thereafter superannuated.

6. The Appellant was discharged of his duty as CMD, FAGMIL vide an Order dated 01.12.2016 passed by the Ministry of Chemicals & Fertilizers, Department of Fertilizers **("relieving order")**. Vide communication dated 13.07.2017 **("approval order of ACC"),** the approval of the ACC to regularize the service of the Appellant till 01.12.2016 was received. The communication also gave its approval to the relieving order issued by the Ministry of Chemicals & Fertilizers, Department of Fertilizers, on 01.12.2016, to the Appellant.

7. The Appellant herein is mainly aggrieved by the non-extension of his tenure as CMD, FAGMIL by the Respondents. Prior to filing the instant Writ Petition i.e., W.P. (C) 2209/ 2017, from which the appeal arises, the Appellant had preferred W.P. (C) 11400/ 2016 seeking relief in the form of extension of his tenure. The same was subsequently withdrawn by the Appellant on his own volition on 03.02.2021.

8. The Ld. Single Judge vide the Impugned Order has dismissed W.P. (C) 2209/ 2017 preferred by the Appellant as the learned Single Judge did not find any merit in the same. The operative paragraphs of the order passed by learned Single Judge read as under:

> *"52. Having noted the submissions made by the petitioner, I may at the outset state that the appointment letter of the petitioner as CMD FAGMIL dated March 03, 2011 clearly stipulated that the appointment is for a period of five years or till the date of superannuation or until further orders, which ever event occurs earlier. The said stipulation contemplates that the tenure of the petitioner may not necessarily be continued till superannuation, as sought to be contended. It can be either for five years or even for a lesser period.*
>
> *53. Having said that, I may also state, the submissions made by the petitioner as noted above are primarily on the premise that there was only one complaint filed against him by M/s Raj Gypsum Udyog which having been closed, and no other complaint being pending which can be an impediment for the petitioner to continue on the post of CMD FAGMIL, is fallacious. As has been contended by Mr. Rakesh Kumar, and also stated in the affidavit filed by the respondents to the rejoinder affidavit filed by the petitioner that there were two more complaints filed against the petitioner, viz. (i) complaint dated February 16, 2015 by the same company M/s Raj Gypsum Udyog; and (ii) complaint dated June 30, 2016 by one Harish with respect to recruitment of officers made in*

FAGMIL, post 2010 and manipulations of TA Rules, which show that the petitioner was not free from vigilance angle, is appealing. The matter regarding M/s Raj Gypsum Udyog was sent to CVC vide letter dated July 01, 2016 to seek first stage advice in the matter. The CVC vide its letter dated July 19, 2016 had stated that in order to examine the matter, proposed penalty proceedings against each Officer and bio-data of all accused Officers may be furnished to the Commission. On November 25, 2016, recommendation was made for initiating major penalty proceedings against the petitioner and other Officers of FAGMIL which was approved by the Minister In-charge, i.e., Disciplinary Authority on November 28, 2016. The matter was again sent to the CVC with the draft charge sheet. It transpired that the CVC vide its OM dated March 14, 2017 had furnished its advice for taking action against the petitioner under the extent rules. In the meantime, on December 01, 2016 with the approval of the Minister, the petitioner stood relieved from FAGMIL.

54. Suffice to state, on November 27, 2017 a charge sheet under Rule 9(2)(b) of the CCS Pension Rules 1972 was issued to the petitioner. It appears that the said charge sheet was challenged by the petitioner in this Court by filing writ petition being W.P.(C) 407/2018. The writ petition was disposed of on February 07, 2018 directing Union of India to consider whether the petitioner can be proceeded under the Conduct rules. It is not known as to what decision has been taken by the Union of India.

55. Be that as it may, the aforesaid reveals that on December 01, 2016 the petitioner was not free from vigilance angle as a decision was already taken by the Disciplinary Authority to initiate major penalty proceedings against the petitioner and as such his tenure could not have been extended further. The plea of the petitioner was that till such time, the CVC takes a decision on any complaint made against the petitioner, the petitioner cannot be said to be unfit from vigilance angle, though sounds appealing on a first blush but on a deeper consideration the fact that a decision is taken to initiate major penalty proceedings and the CVC vide its O.M. dated February

07, 2017 did recommend action against the petitioner as per rules and the fact that a charge sheet was issued to the petitioner under Rule 9 of the CCS Pension Rules 1972, though later, cannot be overlooked and the same suggest that the petitioner was not fit from vigilance angle.

56. The plea of the petitioner was that the complaint dated February 16, 2015 being pseudonymous and no confirmation has been received from the complainant before acting on the same could not have been acted upon is unmerited. This plea is contested by the respondents by stating that the complaint being of M/s Raj Gypsum Udyog, it was neither anonymous nor pseudonymous as the said entity is a registered contractor in FAGMIL. Further, M/s Raj Gypsum Udyog had filed four petitions challenging the action of FAGMIL on the tender, as such its identity is known and the genuineness of the complaint cannot be doubted.

57. Insofar as the plea of the petitioner that the services of the Board level employee cannot be terminated if he / she is due to extension without specific order of ACC is concerned, in this regard I may state, though the petitioner was relieved from his duties as the CMD FAGMIL on December 01, 2016, the approval of the ACC was sought only on December 15, 2016 after the impugned relieving order was issued and the petitioner had filed a petition before this Court which was pending. The ACC vide communication dated July 13, 2017 gave its approval for non renewal of tenure of the petitioner and had regularised the period between March 08, 2016 and December 01, 2016 during which period the petitioner continued to discharge the duties of CMD FAGMIL.

58. The submission of Mr. Kumar on this plea is that there is no difference between approval and ex-post-facto approval and the same shall not affect the legality of the decision.

59. The petitioner had relied upon the OM's dated March 31, 2011 and October 30, 2014, whereas the respondents apart from the above circulars have also referred to OM dated April 03, 2001. A reading of the above OMs, the following position is noted:

(i) In the eventuality, the recommendation of PESB for continuance is not accepted, then the approval of the Competent Authority / ACC is to be sought.

(ii) All proposals wherein the incumbents meet the benchmark, but on some other issue such as vigilance etc., the Ministry / Department is not inclined to recommend extension, the proposal shall be referred to the ACC for consideration six months before schedule of expiry of tenure of the incumbent.

(iii) The circular dated October 30, 2014 only records in the first paragraph, the position under the extant policy, inasmuch as in case the initial term of five years of a Board level appointee comes to an end prior to his / her date of superannuation, extension of his / her tenure up to the date of superannuation is considered with the approval of the ACC subject to his / her being free from vigilance angle and meeting the prescribed performance and parameters. In terms of the instructions, the services of any Board level appointee cannot be terminated on completion of his initial term, if he / she is due for extension without specific orders of the ACC.

60. I may state here that OM's of 2001 / 2011 / 2014 contemplates the non-renewal of the tenure of the Board level appointee shall be upon consideration and with the approval / specific orders of ACC.

61. The plea of the petitioner wasthat prior approval of the ACC is required, before relieving the petitioner from duties as CMD, FAGMIL.

62. I am of the view, the said requirement has been met. This I say so for the following reasons:

> *(1) the effect of the instructions / OM's is that the appointee shall not be relieved till such time approval / specific orders of the ACC are sought.*
>
> *(2) the petitioner was relieved, only after taking approval / orders of the ACC.*
>
> *(3) the delayed consideration enured to the benefit of the petitioner as he continued to work as CMD, till such*

time, the ACC approved, the decision of the Ministry / Department, not to extend the tenure, and the said period of nine months was regularised in favour of the petitioner.

63. The plea of the petitioner that the order dated December 01, 2016 is an order of compulsory retirement as the petitioner still had service till 2019, is not appealing. This, I say so, on demitting the office of CMD, FAGMIL, the petitioner should have reverted back to his parent organisation PDIL provided he had maintained his lien there. The lien of the petitioner on his appointment was maintained for five years. There is nothing on record to show that his lien beyond five years was also maintained in PDIL. Even if he has applied, the same has not been maintained. The remedy for the petitioner was to seek an order against PDIL in that regard. No such prayer has been made in this petition nor has PDIL been made a party. Hence, the non renewal of the tenure of the petitioner cannot be construed as compulsory retirement. It is a simple case where the tenure has not been extended beyond five years and nine months, which is permissible under the terms of appointment and also as per the decision of the ACC.

64. Insofar as the plea of the petitioner by placing reliance on the Parliamentary Committee report dated February 06, 2015 to claim compensation is concerned, the same is without merit in view of my above conclusion justifying the non-renewal of tenure. Even the compensation granted in favour of Ms. Rita Kunur was because her tenure was terminated despite extension, which is not the case here. The petitioner cannot seek any parity qua Ms. Rita Kunur.

65. The petitioner has relied upon the judgment of the Division Bench of this Court in the case of Ajay Kumar Joshi and Ors. (supra) to contend that the prior approval of ACC is required before he could be relieved. I have already said prior approval of ACC was taken before the petitioner was relieved. In any case, the said judgment has no applicability in the facts of this case, inasmuch as the relevant rule which was interpreted by the Division Bench to hold that obtaining prior

concurrence from the Central Government is mandatory and post fact concurrence would not validate the promotion is the following "appointment of a member of the service in the case of selection grade and above shall be subject to availability of vacancies in these grades and for this purpose it shall be mandatory upon the said cadres or the joint cadres authorities as the case may be to seek prior concurrence of the Central Government on the number of available vacancies in each grade". The Division Bench has held that the word "prior" occurring in the rule suggest the prior approval of the Central Government and not post facto concurrence. In fact, the reliance on the judgment is misplaced.

66. The petitioner has also relied upon the judgment in the case of Union of India (supra) in support of his contention that pseudonymous complaint cannot be taken into consideration in terms of the circular issued by the CVC. Suffice to state that I have already held that the complaint dated February 16, 2016 was not a pseudonymous complaint, but a complaint made by M/s Raj Gypsum Udyog whose identity is known as it had filed four petitions before the High Court and there was no requirement to refer the complaint to the said Company for owning it.

67. The judgment in the case of H.M. Singh (supra) relied upon by the petitioner has no applicability in the facts of this case inasmuch as the terms of appointment as noted above, stipulate that the appointment is for five years or for a lesser period or till superannuation. Such terms cannot give rise to legitimate expectation to the petitioner that his tenure shall be extended. Even the circulars/orders issued by the respondents which contemplate non-renewal of tenure but with the approval of the ACC, suggest there cannot be any legitimate expectation for extension of tenure. The reliance on the judgment in the case of Educ. Cons. (I) Ltd. SC/ST Empl. Wel. Asso. (Supra) is misplaced, in as much as the decision of the Disciplinary Authority to initiate major penalty proceedings and a charge sheet having been issued, it is clear the petitioner was not clear from vigilance angle.

68. The plea of the petitioner that the Minister had not passed any order and had just put his signature without applying his independent mind and without verification of the factsis also not appealing. This submission of the petitioner is in view of the extract note dated November 25, 2016 reproduced in para 7 above. The note was approved by the Minister pursuant to which the petitioner was relieved. The decision to relieve the petitioner from the post of CMD, FAGMIL is an administrative act which does not require a detailed order by the Minister unlike the quasi judicial decision. Further the plea has no basis as a physical copy of the note has not been placed on record. The petitioner has placed reliance on the judgment of the Supreme Court in Chairman-cum-MD, Coal India Ltd. (supra) is misplaced. As the order with which the Supreme Court was concerned was an order reviving the disciplinary proceedings which are quasi judicial proceedings obligating the authority to pass a reasoned order unlike the decision in this case relieving the petitioner of his duties being a purely administrative decision.

69. The petitioner who has also relied upon the judgment of the Supreme Court in Kalabharati Advertising (supra) in support of his submission that with the withdrawal of the writ petitions on February 16, 2016, the complaints of M/s Raj Gypsum Udyog have lost their relevance is concerned, suffice to state the writ petitions were withdrawn with liberty to avail remedy if any under general law. I find M/s Raj Gypsum Udyog had already availed the remedy of filing the complaint on February 15, 2016, one day before the withdrawal of the Writ Petitions, on which a decision was taken by the Minister In-charge, the Disciplinary Authority to initiate penalty proceedings. So, despite withdrawal of the writ petition, there is a decision against the petitioner which shows there is a justifiable ground to relieve the petitioner. The judgment for the proposition advanced has no applicability.

70. The judgment in the case of State of Maharashtra (supra) and Dr. Sahadeva (supra) relied upon by the petitioner in support of his submission that executive orders / rules / circulars need to be strictly complied with have no applicability

in the facts of this case and also in view of my conclusion above.

71. The reliance placed by the petitioner in the case of Surender Pal Kaul (supra) and State Bank of India (supra) in support of his contention that termination without an inquiry / show cause notice is stigmatic in nature is concerned, the said judgments have no applicability in the facts of this case wherein the terms of appointment as noted above are very clear, inasmuch as that the appointment of the petitioner as CMD, FAGMIL was for a period of five years or till the age of superannuation or even for a lesser period and also in view of my conclusion above justifying non-renewal of tenure of the petitioner on the ground that he is not clear from vigilance angle. Even the order of relieving the petitioner is an order simpliciter without detailing the reasons for not renewing the tenure/appointment.

72. Insofar as the judgment in the case of Anant Construction (supra) and A.K. Verma (supra) are concerned, they have no applicability in the facts of this case.

73. In view of my discussion above, I find no merit in this petition, the same is dismissed. No costs."

9. The Ld. Single Judge has held that a perusal of the appointment letter of the Appellant contemplates that the tenure of the Appellant was not necessarily to be extended upon expiry of his tenure on the post of CMD, FAGMIL. It could have even been for less than 5 years. Further, the submission that the Appellant was free from the vigilance angle was also erroneous as a complaint dated 16.02.2015 lodged by M/s Raj Gypsum Udyog and another complaint by one Mr. Harish with respect to recruitment of officers in FAGMIL had been filed. The Appellant was, therefore, not free from vigilance angle and the same can be construed from the fact that the matter regarding M/s Raj Gypsum was sent to the CVC vide a letter dated 01.07.2016 and subsequently, a recommendation was made for

initiating major penalty proceedings against the Appellant and other officers of FAGMIL. The recommendation was approved by the Minister-in-Charge on 28.11.2016 and on 14.03.2017, the CVC vide an O.M. had recommended that action be taken against the Appellant. However, in the meantime, the Appellant stood discharged of his post as CMD vide an Order dated 01.12.2016.

10. The challenge by the Appellant before the learned Single Judge regarding illegality of the relieving order issued to the Appellant on the ground that the same was only accorded an *ex-post facto* approval from the ACC, was rejected by the Ld. Single Judge holding that the requirement of obtaining prior approval of the ACC was met and that the delay in consideration and approval of the ACC regarding non-renewal of the Appellant's term had in fact benefitted the Appellant as he continued to work as CMD, FAGMIL till his relieving order was issued.

11. The Ld. Single Judge opined that upon expiry of the Appellant's term as CMD, FAGMIL, on 07.03.2016, he should have been reverted back to his parent organization i.e., PDIL. Further, the Ld. Single Judge observed that it was the Appellant's obligation to attempt for an extension of the time period of lien in respect of his post in PDIL. The actual remedy, in fact, lay against PDIL and the same was not even made party to the Writ Petition. The learned Single Judge held that the non-renewal of the Appellant's term could not be construed to be an Order of compulsory retirement.

12. It was *inter-alia* on the aforesaid grounds that the Ld. Single Judge dismissed the Writ Petition.

13. Against the aforesaid reasoning propounded by the Ld. Single Judge

in the Impugned Order, the Appellant has filed the instant Appeal before us. It has been contended that the Ld. Single Judge has erred in law and facts in dismissing the Writ Petition and has only relied upon a selective portion of the written statement filed on 26.02.2021 by the Respondent. It has been further contended that the tenure of the Appellant should have been extended beyond 5 years as he was not under any cloud.

14. The Appellant further contended that it is wrong to assume or construe that the Appellant's tenure as CMD, FAGMIL was limited to just the first initial period of 5 years. It was submitted that the the Ld. Single Judge failed take into account the appointment letter along with the applicable guidelines for extension of tenure. The Appellant has contended that the Ld. Single Judge has merely examined the first paragraph of guidelines dated 30.10.2014 issued vide Office Memorandum of the Secretariat of the ACC, and as per rules, the Appellant was entitled for a further extension of tenure.

15. The Appellant has submitted that the Ld. Single Judge has not considered the concluding lines of the first paragraph of the guidelines dated 30.10.2014 and the fact that at times there are many cases wherein vigilance clearance is not given in a timely fashion due to a heavy case burden pending before it. Thus, as per the new policy guidelines for extension of tenure of board level incumbents where vigilance clearance is not available, dated 30.10.2014, issued by the Secretariat of the Appointments Committee of the Cabinet, DoP&T bearing No. 17(9) EO/ 2014-ACC, the extension is required to be considered by the Competent Authority at least 2 months prior to the approved tenure, if there is no denial of vigilance clearance by

CVC, even if the complaints/ inquiries are pending.

16. It has been submitted by the Appellant that the Ld. Single Judge has erred by not observing the aforesaid revised guidelines wherein the subject matter itself is regarding the extension of tenure of Board level employees wherein vigilance clearance is not available. It was submitted that the Appellant was only relieved from his post as CMD, FAGMIL on the basis of an *ex-post-facto* approval granted by the ACC in July, 2017 i.e., around 8 months after completion of 5 years of his tenure.

17. It was submitted by the Appellant that the first vigilance case was initiated on the basis of a complaint by one M/s Raj Gypsum Udyog and was recommended for closure by the CVC on 04.01.2016. It was finally closed on 27.01.2016 by the Department of Fertilizers. It was stated that the revised particulars of the Appellant for vigilance clearance was only sent on 05.02.2016, subsequent to the cut-off date for consideration. It was stated that the Appellant could not have hoped for a vigilance clearance within the said timeframe. It was further submitted that the Ld. Single Judge has erroneously held that approval of the ACC was taken prior to taking the decision for non-renewal of the Appellant's tenure. The approval was only taken on 13.07.2017. Further, the Appellant submitted that the finding of the Ld. Single Judge in holding that the decision in ***Ajay Kumar Joshi & Ors. v. Union of India & Ors.,*** MANU/DE/3081/2011, is not applicable to the facts of the instant case is erroneous.

18. Reliance was further placed by the Appellant on ***State Bank of India v. Palak Modi***, (2013) 3 SCC 607, to submit that the order of termination of employment of the Appellant is stigmatic in nature and the order could not

be passed without an inquiry is bad in law. It was submitted that the Hon'ble Supreme Court in the aforesaid case has observed that where dismissal for misconduct alleged has been done without conducting an inquiry or without giving an opportunity of being heard, the order of termination is unsustainable. It was submitted that the Hon'ble Apex Court in paragraph 18 of ***Palak Modi*** (supra) has held that a termination order passed on account of misconduct of the employee, without recording any cogent reasons, would not hold good and must be set aside.

19. It was submitted by the Appellant that the complaints which indicate that the Appellant was not free from the vigilance angle for his extension on the post of CMD, FAGMIL to be considered, have been closed as no substance has been found with respect to the same. Further, the complaint made by Mr. Harish with respect to the owning/ disowning process, dated 30.06.2016, was pseudonymous.

20. The legal representatives of the dead Appellant have also filed an affidavit filed during these proceedings. Vide the same, they have reiterated the submissions canvassed by the deceased Appellant. It was further stated by the LRs that had the Respondents informed the Appellant regarding non-renewal of his tenure, the deceased Appellant could have joined back as/on the post of General Manager (CP) & Company Secretary, PDIL. The same could not have been done after 01.12.2016, as the Respondent by way of implied consent allowed the deceased Appellant to discharge his duty as CMD, FAGMIL from 07.03.2016 till 01.12.2016.

21. It was submitted by the LRs that due to the loss suffered by the deceased Appellant, they are due to be compensated as today, the actual

basis of removal of the deceased Appellant, i.e., the alleged objection on the issue of vigilance, has fallen flat because the employees below board level who had been charge sheeted on similar / identical set of charges, have been exonerated.

22. Written submissions have also been received from Respondent No. 1. It has been submitted that the Appellant's appointment was contractual in nature and further extension of the same was not a matter of right. It was submitted that extension of tenure was at the behest of the Department and as per circular dated 30.10.2014 of the ACC, the department is not bound to extend the services of the Appellant if he is not free from vigilance angle.

23. It was submitted that several complaints were received against the Appellant during the course of his tenure. A vigilance case was filed by M/s Raj Gypsum Udyog wherein the Appellant's name had been mentioned. The same was forwarded to the CVC on 23.09.2015 but was closed by the Department of Fertilizers on 27.01.2016.

24. It was submitted that another complaint dated 16.02.2015 by M/s Raj Gypsum Udyog wherein the Appellant's name had been mentioned along with other below Board level employees was also received by the Department of Fertilizers. The same contained allegations of corruption and irregularity on part of FAGMIL in the tendering process of mining of gypsum, and was forwarded to the CVO of FAGMIL on 03.03.2015 with a request to conduct inquiry and submit the preliminary report.

25. It was submitted by the Respondent that when the Appellant's extension on the post of CMD, FAGMIL was being considered, the Appellant was not free from the vigilance angle and the clearance required

for his name to be considered for extension had also not been granted.

26. It was submitted by the Respondent that the CVO, FAGMIL, vide its report dated 23.06.2015 had found lapses in the duties performed by the Appellant. The CVO, FAGMIL, thereafter initiated the proposal for extension/ non-extension of the Appellant's tenure as CMD, FAGMIL on 05.08.2015. It was stated that the Department of Fertilizers vide a letter dated 26.11.2015 forwarded the particulars of the Appellant to the CVC to seek clearance. Vide the same, it was stated that two complaints were made against the Appellant, one of which had been closed. However, the CVO, vide its finding upon the complaint made by M/s Raj Gypsum Udyog in report dated 23.06.2015 had fixed responsibility upon the Appellant.

27. It was submitted that upon the end of the Appellant's tenure on 07.03.2016, the Appellant had not submitted any request to the Department of Fertilizers seeking to be released and to join his parent department, PDIL. It was submitted that the department did not forcibly retain the Appellant to serve in FAGMIL beyond 07.03.2016 and he could have very well gone back to his parent organization.

28. It was submitted that under the extant rules, no provision exists wherein Board level appointees involved in vigilance cases should be given extension of their tenure automatically, till final comments from the CVC are received.

29. It was submitted by the Respondent that a third complaint was also received with respect to recruitment of officers in FAGMIL and the same had included the Appellant's name. Further, the complaint filed by M./s Raj Gypsum was referred to CVC vide letter dated 01.07.2016 to seek first stage

advice in the matter. The CVC proposed penalty proceedings on all the officers, including the Appellant. Thereafter, Secretary, Fertilizers vide his note dated 15.11.2016 recommended imposition of major penalty on CMD, FAGMIL and other officers asking them to explain their conduct. Thereafter, on 23.11.2016, the Hon'ble Minister had also approved the imposition of major penalty on the Appellant and other officers involved. On 28.11.2016, the Minister-in Charge extended his approval to the non-extension of Appellant's tenure, as also the decision to relieve him from his duties with immediate effect.

30. It was submitted that the Appellant was relieved from FAGMIL vide Order dated 01.12.2016 as two vigilance cases were pending against him, due to which clearance could not be obtained. Thus, his case could not be moved further as vigilance clearance was one of the essential requirements for considering extension.

31. It was further submitted by the Respondent that subsequent to conclusion of the Appellant's tenure, the Department of Fertilizers had sought advice from the Department of Legal Affairs on whether a charge-sheet could be issued to the Appellant subsequent to expiry of his tenure. The Department of Legal Affairs had replied to the query vide advice dated 16.11.2017 stating that the Department may initiate departmental proceedings as per the grounds mentioned in Rule 9 (2)(b) of the CCS (Pension) Rules, 1972. Accordingly, a charge sheet was also issued on 27.11.2017 on the complaint dated 16.02.2015 lodged by M/s Raj Gypsum Udyog. However, after detailed examination and consultation with multiple departments, the said charge sheet was withdrawn on 20.04.2020 as

infructuous since CCS (Pension) Rules, 1972 were found to not be applicable and the CCS & CDA Rules of FAGMIL also did not permit issuance of charge sheet to retired employees.

32. The Respondent has further contended that the Appellant's contention that all the below board level employees were exonerated on the said complaint cannot be accepted as they were exonerated after due inquiry was conducted and charge sheet was issued. The Appellant did not go through the same procedure and his charge sheet had to be withdrawn on a mere technicality.

33. Heard learned Counsel for the Parties at length and perused the record. The learned Single Judge has considered all the grounds raised by the writ petitioner and has passed a detailed order. A perusal of the Appointment Order dated 03.03.2011 issued to the Appellant itself would show that the Appointment of the Appellant was contractual in nature and that there was no vested right for extension of the tenure of the Appellant as CMD, FAGMIL. The same is reproduced hereunder:-

> *"The president is pleased to appoint Dr. S. K. Das, presently working as General Manager (CP) and Company Secretary in projects and Development India Limited (PDIL), as Chairman and Managing Director, FCI Aravali Gypsum & Minerals India Limited (FAGMIL) in schedule "C" scale of pay Rs.65,000-75,000/- from the date of assumption of charge of the post, for a period of 5 years or till the date of his superannuation or until further orders, whichever event occurs earlier.*
>
> *Further, in pursuance of Article 93(1)(a) of the Article of Associates of FCI Aravali Gypsum and Minerals India limited, (FAGMIL), the president is also pleased to appoint Dr. S. K. Das, Chairman and Managing Director, FCI Aravali Gypsum and Minerals India Limited, (FAGMIL), on the Board of*

Directors, FAGMIL from the date of assumption of charge.

The other terms & conditions of his appointment will be issued separately."

34. A reading of the aforesaid establishes that the Appellant was appointed for a period of 5 years or till the date of superannuation, whichever one was earlier. It can also without a doubt be understood that the Appellant's appointment was contractual in nature. Reliance can be placed on ***Ravendra Garg v. Union of India & Ors.,*** 2016 SCC OnLine Del 2687. The Petitioner, therein, was appointed as Director (Finance) in the National Projects Construction Corporation Limited **("NPCC")** for a period of 5 years or till the date of superannuation or until further orders, whichever was earlier. The appointment was on the basis of the recommendation of the PESB and approval of the ACC. The Petitioner therein, had *inter-alia* approached this Court seeking quashing of the Order dated 30.09.2014 whereby he was relieved from the post of Director (Finance) and for grant of pay and allowances as due in terms of relevant O.M.'s therein. The limited issue which arose for consideration before a Division Bench of this Court therein was whether the Petitioner had been wrongly denied extension of tenure as Director (Finance), NPCC. It is pertinent to note that the O.M. dated 31.03.2011 issued by the ACC regarding extension of Board level employees was also an aspect which was considered by the Court therein. While dismissing the case, this Court had held as under –

> ***6.*** *We do not find any merit in the contentions raised by the petitioner, which are devoid of legal substance and force. At the outset, we would explicitly clarify that we are not examining and commenting on merits on the penalty of 'censure', as this is not the subject matter of challenge and directly an issue before us. The limited issue that arises for consideration in the present*

writ petition is whether the petitioner has been wrongly denied extension of tenure as the Director (Finance), NPCC. We would in the beginning observe that extension of tenure cannot be claimed as a matter of right. Tenure appointments are for the period specified. These contractual appointments are subject to the terms agreed and settled. It is within the domain and power of the respondents and the petitioner to agree or not agree to accept and accord extension of tenure. When a tenure appointment comes to an end, the respondents may or may not extend the tenure. Equally, the person may not accept or agree to another term. Of course, if the respondents act in an arbitrary manner, capriciously and contrary to law and do not extend the tenure on extraneous or irrelevant considerations, the said wrong can be checked and corrected. This is the limited scope in which a Court/tribunal exercises Power of judicial review in order to ensure objectivity and fairness in State action and the Courts do not act as an appellate forum.

7. *By Office Memorandum dated 31st March, 2011, the Department of Personnel and Training had communicated to different authorities/public sector enterprises the guidelines, which should be followed, when a case is referred to the ACC for extension. The said guidelines read:—*

> *"(a) All cases of extension shall be referred to the ACC, as is the existing procedure.*
>
> *(b) The PESB shall, in consultation with the DPE, evolve a benchmarking system to be applicable while considering proposals for extension.*
>
> *(c) All proposals in which the incumbents meet the benchmark and the Ministry/Department decides to recommend extension shall be referred to the ACC for approval, not later than two months before the scheduled expiry of the tenure of the incumbent. No reference would be needed to PESB for a fresh joint appraisal.*
>
> *(d) All proposals, wherein the incumbents meet the benchmark, but have some other issue such as vigilance etc. for which the Ministry/Department is*

not inclined to recommend extension, shall be referred to the ACC for consideration six months before the scheduled expiry of tenure of the incumbent(e) All proposals wherein the incumbents do not meet the benchmark shall be referred to the PESB by the Department/Ministry concerned. This reference has to be six months before the scheduled expiry of tenure of the incumbent. The recommendation of the PESB shall be referred to the ACC, for orders as at present.

(f) All proposals wherein the Ministry suggest termination/non-extension of the incumbent shall be accompanied by the proposal for giving additional charge."

……

10. *The guidelines dated 31st March, 2011, are in the nature of administrative instructions. In the factual background of the case in question and after considering the entire record, including the PAR grading in earlier years on consideration of the letter dated 1st August 2014 by their letter dated 26th September, 2014 the ACC conveyed their approval on proposal for non-extension of tenure after in depth and thorough examination. This scrutiny and conclusion cannot be bludgeoned and brushed aside as if there was lack or absence of independent application of mind by the ACC. This is a case in which there was contemplative and reflective examination of the relevant facts and issues and thereafter, it was decided that the extension of tenure should not be granted.*

11. *Adherence to the guidelines in question is for a purpose and objective. It enables the ACC to examine each case expeditiously, transparently and in a fair manner. It helps in taking decisions. Facts of the present case are peculiar. The petitioner himself had levelled allegations and casted aspersions on the objectivity and conduct of the earlier CMD. Filling of the PARs by the said CMD and awarding of benchmarks would have been questioned and challenged for lack of objectivity, etc. It is in this context that we have to*

examine and consider the actions of the respondents. Guidelines are pointers and enablers like tools and implements to effectively and methodically discharge and consider cases of extension or non extension. They are not rigid rules, but procedural guidelines. The guideline should be normally followed, but cannot read as binding and inelastic rudiments and first principles. Law does not require that the guidelines must be followed even when following them would result in complications and asymmetrical consequences. When guidelines are framed they should be adhered to, but at the same time, there has to be flexibility when implementation of procedural guidelines in a particular case or factual matrix would itself be impossible or create inequities.

12. *Reliance placed upon the decision of the Supreme Court in Dr. Amarjit Singh Ahluwalia v. The State of Punjab (1975) 3 SCC 503, does not assist or further the case of the petitioner. Administrative instructions, it was observed, do not have force of law but the State should not depart from or negate them without rational justification, and it was observed that to fix an artificial date for commencement of continuous service for the purpose of giving seniority to some in contravention of the said circular would violate Articles 14 and 16 of the Constitution. Pertinently, the ratio observes that the State should not depart from their policy without rational justification. Articles 14 and 16 embody the principle of rationality. In the present case, we have noted the rationale and reasons given by the Ministry and accepted by the ACC. In the written submissions filed and in the submission recorded above, the petitioner has sought to challenge and question each of the reasons given in the communication of the Ministry dated 1st August, 2014 to allegedly demonstrate that the reasons should not be accepted. This is not acceptable. This is not the manner in which a decision taken by the administrative authorities can be questioned and challenged. The scope of judicial review is limited. Merits of the said decision are not amenable to legal scrutiny. We do not think in the facts of the present case, the examination undertaken by the ACC and the reasoning as to why guidelines for the purpose of benchmark cannot be*

adhered to, can be rejected as make-belief and whimsical. The reasoning has a good foundation.

……

14. *Administrative law distinguishes between mandatory and directory provisions. Procedural provisions are normally directory and not mandatory. It is the intent of the legislature which determines as to whether the provisions of law are mandatory or directory. For ascertaining the real intention, one has to look at; the nature and design of the statute and the consequences which would follow from construing one way or the other; the impact of other provisions, whereby necessity of complying with the provision in question is avoided; the circumstances, whether the statute provides for a contingency for non-compliance with the provisions, whether non-compliance is visited with some penalty; serious or the trivial issues etc. (See State of U.P. v. Babu Ram UpadhyaAIR 1961 SC 751).*

15. *In Gridco Limited v. Sadanand Doloi, (2011) 15 SCC 16 while dealing with contractual employment and termination of contractual employment, the Supreme Court examined the difference between public and private law activities of the State, for the State while exercising its powers and discharging its functions acts for public good and in public interest. State action can be challenged on the ground of arbitrariness, unfairness and unreasonableness. In this context, it has been observed that even if the dispute falls within the domain of contractual obligations, it would not relieve the State of its obligation to comply with basic requirements of Article 14. These principles ensure Rule of Law. However, these principles cannot invoke to amend, alter or vary express terms of contracts between the parties when they are freely entered into. The mutual rights and liabilities of parties are governed by the said terms and law relating to contracts. Reference was made to State of Orissa v. Chandra Sekhar Mishra, (2002) 10 SCC 583, Satish Chandra Anand v. Union of India, AIR 1953 SC 250 and Parshotam Lal Dhingra v. Union of India, AIR 1958 SC 36. Referring to DTC v. Mazdoor Congress, 1991 Supp (1)*

SCC 600 and Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly, (1986) 3 SCC 156, it was observed as under:—

> *36. In Parshotam Lal Dhingra v. Union of India [AIR 1958 SC 36] this Court followed the view taken in Satish Chandra case [AIR 1953 SC 250]. Any reference to the case law on the subject would remain incomplete unless we also refer to the decision of the Constitution Bench of this Court in DTC v. Mazdoor Congress [1991 Supp (1) SCC 600: 1991 SCC (L&S) 1213] where this Court was dealing with the constitutional validity of Regulation 9(b) that authorised termination on account of reduction in the establishment or in circumstances other than those mentioned in Clause (a) to Regulation 9(b) by service of one month's notice or pay in lieu thereof. Sawant, J. in his concurring opinion held that the provision contained the much hated rules of hire and fire reminiscent of the days of laissez faire and unrestrained freedom of contract and that any such rule would have no place in service conditions.*
>
> *37. To the same effect was an earlier decision of this Court in Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [(1986) 3 SCC 156: 1986 SCC (L&S) 429: (1986) 1 ATC 103] where the Court had refused to enforce an unfair and unreasonable contract or an unfair and unreasonable clause in a contract entered into between parties who did not have equal bargaining power.*
>
> *38. A conspectus of the pronouncements of this Court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a*

contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review.

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

40. XXXXX

41. It is also evident that the renewal of the contract of employment depended upon the perception of the management as to the usefulness of the respondent and the need for an incumbent in the position held by him. Both these aspects rested

> *entirely in the discretion of the Corporation. The respondent was in the service of another employer before he chose to accept a contractual employment offered to him by the Corporation which was limited in tenure and terminable by three months' notice on either side. In that view, therefore, there was no element of any unfair treatment or unequal bargaining power between the appellant and the respondent to call for an over-sympathetic or protective approach towards the latter."*
>
> ***16.*** *In the factual matrix of the present case it cannot be said that the failure to resort to benchmarking criteria vitiates the ACC decision. The guidelines stipulated in letter dated 28.06.2011, as noticed above are to expedite the process and help the ACC in taking a decision objectively, transparently and without calling for records and information.*
>
> ***17.*** *In light of the above, we do not find any merit in the present writ petition and the same is dismissed. There will be no order as to costs."*

35. In light of the aforesaid judgment, this Court is of the considered opinion that the Appellant was not entitled for an extension as a matter of right and the learned Single Judge has rightly dismissed the writ petition.

36. To put forth the submission that the Appellant was entitled for extension beyond the initial period of 5 years of his appointment, reliance has been placed on an O.M. of the ACC dated 31.03.2011, guidelines of the PESB dated 13.05.2011, and a letter dated 28.06.2011 which pertains to the benchmark for consideration of extension of Board level employees in CPSE. The same runs in continuance with guidelines of PESB dated 13.05.2011. A perusal of these makes it very clear that the Appellant in fact had no vested right for extension of his tenure. The O.M.'s *inter alia*

envisage formulation of a benchmarking system and stipulated grade/ marks in the same for *consideration* of extension. The afore stated circulars only refer to a situation wherein a *proposal/ recommendation* for extension/ non-extension is required to be forwarded to the PESB and ACC by the concerned Administrative Ministry. Further, keeping in mind the decision of the Division Bench of this Court in ***Ravendra Garg*** (supra) the employment of the Appellant was unquestionably contractual.

37. The O.M. dated 30.10.2014 issued by the Secretariat of the ACC would also be of no help to the Appellant. A careful reading of the same would in fact buttress the aforestated finding of this Court that there was never any vested right which existed in the Appellant to be given an extension. The O.M. merely envisages a situation wherein if an officer's tenure on a certain post is due for extension, and complaints are pending against such Officer, the concerned Ministry ought to submit to the ACC, a *proposal* for an extension of tenure, at least two months prior to the conclusion of the said Officer's tenure.

38. It would be pertinent to mention that the Appellant was not terminated from his service in FAGMIL, he was merely relieved of his charge upon completion of his tenure. In fact, he has enjoyed the said post for a period longer than his stipulated tenure of 5 years as his relieving order was only issued on 01.12.2016.

39. The contention of the Appellant that he was free from the vigilance angle also falls flat on its face as from the findings given by the Ld. Single Judge and documents on record. It can be discerned that there was complaint dated 16.02.2015 filed by one M/s Raj Gypsum Udyog and another

complaint dated 30.06.2016 filed by one Mr. Harish with respect to recruitment of officers in FAGMIL pending against the Appellant during the period his extension on the post of CMD, FAGMIL was under consideration. The complaint regarding M/s Raj Gypsum Udyog was sent to CVC vide letter dated 01.07.2016 seeking first stage advice in the matter. The CVC vide its letter dated 19.07.2016 had stated that to examine the matter, proposed penalty proceedings against each Officer and bio data of all accused Officers may be furnished to it. On 25.11.2016, a recommendation was made for initiating major penalty proceedings against the Appellant and other Officers of FAGMIL which was approved by the Minister-in-Charge on 28.11.2016. The matter was again sent to the CVC with the draft charge sheet. It transpires that the CVC vide its O.M. dated 14.03.2017 had furnished advice for taking action against the Appellant under the relevant rules. However, in the meantime, the Appellant stood relieved from FAGMIL. Subsequent to his relieving order being passed, the Appellant was charge sheeted on 27.11.2017 in accordance with Rule 9(2)(b) of the CCS Pension Rules, 1972. The same was however later withdrawn as infructuous vide an Order dated 04.08.2020 of the Secretary (Fertilizers). With regards to the complaint filed by Mr. Harish, vide Written Submissions filed by Respondent No. 1 herein dated 28.06.2022, it has been placed on record that the same contained the name of the Appellant and was pending investigation.

40. This Court is of the considered opinion that by no stretch of imagination can it be construed that the Appellant was free from the vigilance angle at the time of his extension being considered. Major

penalties had been sought to be imposed upon him and there was definitely an impression of certain irregularities having been committed at the behest of the Appellant during his tenure as CMD, FAGMIL. Even if for the sake of argument if it is accepted that the Appellant was in fact not under any cloud, the same by itself does not create a vested right for extension of the Appellant's tenure. The Appellant's extension of tenure can merely be considered, and it is the discretion of the appointing authority to grant an extension or not.

41. The Appellant has further submitted that the complaints lodged against him by M/s Raj Gypsum Udyog and Mr. Harish were pseudonymous and thus, no action to that extent should have been taken by the Competent Authority. This stand has been also contested by the Respondent and it has been submitted that the complaint dated 16.02.2015 of M/s Raj Gypsum was in fact submitted on its letterhead along with relevant office address, telephone numbers etc. The said entity is a registered contractor in FAGMIL and the entity had also filed four petitions challenging the action of FAGMIL on the tender.

42. The Appellant has placed reliance upon a judgment delivered in the case of ***A.K. Joshi*** (supra). The facts of the aforesaid case reveal that it was a case with respect to the grievance of the Petitioner therein against the State of Uttarakhand in extending the benefit of promotion to the Respondents in the pay scale of Chief Secretary of the State and further, challenging the selection of one of the Respondents to the post of Chief Secretary. The case therein was based on a completely different subject matter, i.e., of promotion. Herein, the question which arises for consideration is that

whether the Appellant was entitled for an extension to the post of CMD, FAGMIL beyond the initial period of his appointment for 5 years. In light of the aforesaid, as the case is distinguishable on facts, the Appellant is not entitled for any relief.

43. The Appellant had further stated that the relieving order issued to the Appellant was stigmatic in nature and not an Order simpliciter. It was stated that the same is evident if one reads the relieving order along with the submissions of the Respondent in the written submissions filed on 26.02.2021 before the Ld. Single Judge and thus, the case of ***Palak Modi*** (supra) is squarely applicable to the instant case. It is submitted, in accordance with the case of ***Palak Modi*** (supra) the relieving order is liable to be set aside as the same has been passed on the ground of misconduct of the Appellant, without affording him a proper inquiry. In the opinion of this Court, the afore stated submission does not hold weight and we are in concurrence with the finding of the Ld. Single Judge on this aspect. ***Palak Modi*** (supra) is distinguishable from the instant case on facts as therein, the Hon'ble Supreme Court was concerned with termination of probationers who had used unfair means for appearing in a test on the basis of which their service was to be regularised. Herein, the Order was clearly an Order simpliciter whereby the Appellant was relieved upon conclusion of his tenure of 5 years. Extension/ non-renewal of the Appellant's term as CMD, FAGMIL was at the discretion of the Respondent and by no stretch of imagination a relieving order can be termed as an order of removal/ termination.

44. The contention of the Appellant that he was forced to continue in the

services of FAGMIL is again erroneous. He was relieved after expiry of 5 years period and no effort was made by him to join his parent organization or for extension of his lien. From the submissions of the parties and documents on record, it cannot be construed that the Appellant made any efforts to do the same. It has also been stated by the Respondent that there was no request received by them from the Appellant to be relieved from FAGMIL and to rejoin PDIL. The Appellant can by no stretch of imagination claim continuance on the post of CMD after expiry of 5 years' tenure which was provided in the order posting him as CMD on 03.03.2011. He was posted for a period of 5 years and after completion of 5 years period, he was rightly relieved from the post of CMD in terms of the appointment order.

45. In light of the aforesaid, we find no merit in the instant Appeal preferred by the Appellant.

46. The Judgment rendered by the Ld. Single Judge is upheld and we find no infirmity with the same.

47. The Appeal is dismissed along with pending applications, if any.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

MARCH 03, 2023