

# THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 20.11.2012

+ **W.P.(C) 4279/2012**

**VINOD KUMAR SANDLESH**

... Petitioner

versus

**UNION OF INDIA & ORS**

... Respondents

## Advocates who appeared in this case:

For the Petitioner : Mr R. Venkataramani, Sr. Adv. with Mr  
Rajesh Gogna, Ms Joytika Kalra & Mr Aljo K. Joseph,  
Adv.

For the Respondent : Mr M.K. Bhardwaj, Adv. with Mr Amit Chadha, Adv  
R-1/UOI  
Mr Devesh Singh, Adv. for R-2 & 3

## **CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

## **JUDGMENT**

### **BADAR DURREZ AHMED, J**

1. This writ petition has been preferred under Articles 226 and 227 of the Constitution of India assailing the order dated 10.07.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi. By virtue of the impugned order dated 10.07.2012, the Tribunal has dismissed three Original Applications being OA No. 4640/2011, OA No. 156/2012 and OA No. 313/2012 as also the C.P. No. 407/2012 arising out of OA No. 313/201 while upholding the relieving order issued by Respondent No.2 requiring the incumbent, namely, Vinod Kumar Sandlesh to relinquish charge of the

post held by him at Johannesburg. It may be pointed out that all the three Original Applications were filed on behalf of the petitioner Vinod Kumar Sandlesh against the same set of Respondents, except that in OA No. 313/2012, a private Respondent No.3 (Sh. Anwar Haleem, Dy Director, ICCR) was also impleaded as a party, in addition to other common respondents.

The facts:

2. The necessary facts are stated below:-

2.1 In 1987, the Petitioner joined the Central Translation Bureau as a permanent employee of the Central Government. An advertisement was published on behalf of Indian Council for Cultural Relations, Respondent No. 2 (hereinafter referred to as “ICCR”) for appointment to the post of Director in the Indian Cultural Centre (hereinafter referred to as “ICC”) at Johannesburg, South Africa. In response to the said advertisement, the petitioner came to be appointed as Director of ICC on 13.09.2010 purely on deputation basis for a period of three years. It is relevant to note that the Appointment Order itself indicated that the appointment of the petitioner would be subject to the provisions of the Agreement to be executed by and between the petitioner and the ICCR.

2.2 Subsequently, the petitioner entered into an Agreement with ICCR on 19.01.2011. Clause 4 of the said Agreement is relevant for the purpose of adjudicating the dispute at hand, and it, to the extent relevant, reads as under:-

“4. The Service of the employee may be terminated under the mentioned circumstances, that is to say:

a) .....

b) .....

c) By three calendar months notice in writing given at any time during service under this Council or by the Council to the Employee without assigning any reason cause whatsoever PROVIDED always that the Council may, in lieu of any notice herein provided for, give the employee a sum equivalent to the amount of his pay for three months or for the period by which the such notice falls short of three months. If, after the termination of service without notice, the employee is detained in the country in which he was employed due to delay in arrangement of return passage or any other valid reason, then he may be paid the foreign allowance at the rates determined by the Council.”

x                    x                    x                    x                    x”

2.3 Pursuant to the said agreement, the petitioner took charge of the post of Director, ICC, Johannesburg, in the month of January, 2011. All was going well for him, till one Mr. Lalit Dixit a former Tabla Teacher of ICC sent a complaint dated 17<sup>th</sup> July, 2011 to the Ministry of External Affairs levelling charges of undue harassment and torture against the petitioner.

2.4 Taking cognizance of the complaint of Mr. Lalit Dixit, ICCR sent a communication dated 21.07.2011 to the Indian High Commissioner at Pretoria to conduct an enquiry into the complaint furnished by Mr. Lalit

Dixit. The High Commissioner, in turn, ordered an enquiry to be conducted and appointed a Senior Officer of the Consulate General of India, Johannesburg namely Mr. Sujit Chatterjee, Consular (Cons.) for the purpose of conducting the enquiry.

2.5 The Officer appointed to conduct the enquiry visited ICC on 22<sup>nd</sup> July, 2011 and 26<sup>th</sup> July, 2011 for the purpose of probing into the allegations made against the petitioner. The Enquiry Officer also issued a note dated 26.07.2011 requiring the petitioner to answer the complaint filed by Mr. Lalit Dixit against him.

2.6 The Enquiry Officer submitted his report dated 28.07.2011 to the High Commissioner wherein he arrived at the following conclusion:-

“2. There appears to be no evidence to show or prove any substance in the allegations leveled by the complainant. Shri Dixit and the teachers have been assisted to the extent possible in settling down and the office cannot be asked to provide transport and other assistance on a continuing basis. It can therefore be stated that the allegations leveled by the complainant appear to be baseless and ill-motivated. It is seen that the complainant has not been attending to office citing lack of transport etc, which is against all office norms.

3. In conclusion, it appears that an attempt by Director ICC to put in a semblance of discipline and ask his colleague teachers to conform to office norms, has resulted in this outburst by the complainant.”

2.7 The report submitted by the Enquiry Officer was considered by Mr. S. Kumaran, Deputy High Commissioner, who agreed with the report submitted by the Enquiry Officer. By virtue of the report dated 1<sup>st</sup> August, 2011, the following observations were made by the Deputy High Commissioner:-

“High Commission of India  
Pretoria

Reference HC’s noting on pre-page, seeking comments and recommendations on the report by consul (Consular), CGI Johannesburg on the complaint made by Shri L.K. Dixit Tabla Teacher at ICC, Johannesburg.

2. I have studied the complaint, the report of the enquiry officer and also made some enquiries of my own. The following are my comments.

(a) I agree fully with the investigating officer that the complaint is “baseless and ill-motivated.”

(b) The IO’s observation that the official has been attending office on flimsy reasons needs to be specifically noted. In my view, it is likely that a false complaint may have been made to pre-empt disciplinary action against the complainant for failure to discharge his official responsibilities rather than due to any genuine grievances faced by him.

(c) The manner in which the complaint has been made, by straightaway sending it to ICCR and copies to president, PM etc, without a reference to the consul General or the High Commissioner as per proper

channels for administrative redress underline that the official is not amenable to office discipline.

(d) The complainant appears unwilling to work as part of a team or carry out official responsibilities allocated to him. On the other hand, he has shown no qualms in blatantly criticizing his senior officer on flimsy grounds thereby vitiating the working atmosphere at the office.

3. Separately based on comments obtained in confidence from members of the local Indian community, I learn that Shri L.K. Dixit has sought to organize private tabla lessons on commercial terms. This has been corroborated by two prominent Indians, who however requested their names not be used as they were unwilling to make public complaints. This is a very serious matter which cannot be condoned as it reflects poorly on the official concerned, the ICC and the Consulate General/High Commission as a whole. It is also a violation of the terms of Shri Dixit's deputation.

4. I conclude that Shri Dixit has made a false complaint. He appears to be insubordinate and not amenable to office discipline. He attempts to organize private tuitions are inexcusable overall I would recommend strong disciplinary action against Shri Dixit.

Submitted

Sd/-  
Shambhu S. Kumaran

Deputy High Commissioner  
01.08.2011”

(Underlining added)

2.8 Subsequently, on 10<sup>th</sup> August, 2011 Mr. Anwar Haleem, Dy Director ICCR who is Respondent No.4 visited ICC on the pretext of enquiring into various complaints made by the employees of ICC Johannesburg against the petitioner. It is the case of the petitioner that he was unaware about this visit of the Respondent No.4 and came to know about it later from a colleague, namely Mrs. Kamla Dhyani. The Petitioner further states that even the High Commission was not aware about the visit of Mr. Anwar Haleem, Respondent No.4. The petitioner further states that Mrs. Kamla Dhyani was ‘coerced’ to make a statement against him by Respondent No.4 during his surprise visit to ICC Johannesburg and she also made a complaint regarding the same to the Deputy Director General, ICCR through a letter dated 12.08.2011.

2.9 Pursuant thereto, the High Commissioner, Pretoria sent a fax to the President and Director, ICCR on 13.08.2011 stating that the manner in which the enquiry was being conducted against the petitioner was totally uncalled for and any action initiated against the petitioner on basis of the complaints would be unjust. The said communication/ report of the High Commissioner dated 13.08.2011 is extracted below:-

“EMAIL/FAX  
High Commissioner of India  
852 Schoeman Street, Arcadia 0083 Pretoria, Rep.  
of South Africa  
Tel: ++27-12-342 5397 Fax: ++27-12-430 3326  
E-mail: [indiahc@hicomind.co.za](mailto:indiahc@hicomind.co.za)

Pages	04
To	ICCR, New Delhi

Repeat	President, ICCR, New Delhi Foreign Secretary, Foreign New Delhi
Date	August 13, 2011

Director General from High Commissioner

You are aware of the difficulties we are facing in the Cultural Centre in Johannesburg. The developments in the last few days have led to complete break-down of discipline and hierarchy.

2. This started with the complaint of Tabla Teacher accusing Director of harassment and mental torture. I had got the matter investigated by senior officers in the Consulate/Mission and finding of the Deputy High Commissioner Shambhu Kumaran was that the complaint was completely unfounded. In fact, the complainant himself has failed to discharge his duties and has indulged in unacceptable insubordination and undisciplined behaviour. There have also been complaints regarding solicitations by him for private tuitions causing considerable embarrassment to GOI. Clearly, his complaint was meant to preempt disciplinary action against him. My full report is already with you. In that I had recommended that he should be immediately recalled since he has managed to completely vitiate the atmosphere in the Cultural Centre.

3. Last few days, DDG(I), ICCR, Shri Anwar Haleem was here for further investigations. Subsequently, however, I have received an E-mail from Music Teacher, Smt. Kamla Dhyani (this has

been addressed to ICCR), which raises extremely serious issues, including instance of somebody else having sent an e-mail to ICCR using her name and from her e-mail ID without her knowledge. This is a serious offence punishable under IT Act. She has also stated that she was pressurized by Consulate officials to give false evidence against the Director in a pre-planned manner. From her message it is quite clear that a conspiracy is afoot by some people to falsely implicate Director of the Cultural Centre, Shri Vinod Sandlesh. DDG(I) was apprised of this position by Mrs. Dhyani herself during her meeting with him.

4. In this context, I would like to put on record that Shri Sandlesh who joined Cultural Centre in January this year has done quite well in reaching out to a wide cross-section of the South African population including both mainstream and Indian community cultural organizations. He has been closely involved in the cultural activities of the Indian community and has sought to enhance the visibility and profile of ICCR and the Indian Cultural Centre here. Shri Sandlesh has worked in extremely difficult circumstances for setting up the Cultural Centre tackling all the teething problems despite lack of full cooperation from the Consulate. Ironically, on his arrival, he was accommodated in a room earlier used by the drivers in the Consulate (until the hiring of separate premises).

5. After the hiring of new premises and arrival of India-based teachers, we had to dispense with the services of local teachers who had been conducting classes in the Consulate over the weekend for the last several years. This was, of

course, the natural course of action since our teachers were far more qualified and professionally trained as compared to average level of training by most of the local teachers. This unpleasant task had to be undertaken by the Director and obviously those local teachers became extremely resentful of him. In these circumstances, it is quite natural that they would be badmouthing him and I would like to impress that it would not be appropriate for ICCR to form any impression with regard to the performance of the Director, ICC on the basis of feedback from them.

6. During the last three months, Shri Sandlesh has been fully involved in the planning and execution of the ongoing Indian Festival in South Africa which comprised of several wide ranging activities. His work required active liaison with senior officials of the South African Department of Arts and Culture, officials of various Provincial Governments as well as functional level people in various cultural institutions and organizations which were hosting our activities. The festival which has been very successful and first of its kind at government level, was coordinated by DHC Shambhu Kumaran – he has given me excellent feedback on the efficient and tactful discharge of various tasks assigned to the Director, ICC. Additionally, he has negotiated for several classes to be held outside the Cultural Centre in Lenasia, Laudium and Pretoria as well as late afternoon classes in the week days at the Cultural Centre. Plans have also been drawn up for starting weekly cultural programmes by local Indian and other artists at the Cultural Centre premises in order to enhance the vibrancy of the Centre.

7. In overall terms, I am fully satisfied with Shri Sandlesh's performance. He has shown enthusiasm and initiative in outreach programmes as should be expected from an officer heading our Cultural Centre. To my mind, his only fault has been that he was perhaps too lenient with the teachers in the beginning. He should have insisted on observance of proper office timings and requisite office discipline by all the teachers right from the beginning. Laxity in the initial period, which he allowed to enable teachers to settle down, of course, proved costly since some teachers got used to the idea of coming to the Centre late, just for one or two hours and not coming to the Centre at all for days together.

8. From the tenor of the enquiry being conducted by the ICCR, I get a disturbing impression that serious penal action is being contemplated against Director, ICC based on certain misinformation and complaints by people with vested interests. Such an action would be completely unjust since the officer is not guilty of any serious wrong-doing.

Best regards.

Sd/-  
13.08.2011  
(Virendra Gupta)  
High Commissioner"

2.10 The petitioner, in order to clear his stand, sent a letter dated 16.08.2011 to Mr. Anwar Haleem, Respondent No.4, stating that the complaints against him were only made as counter blasts because of the discipline imposed by him at the ICC.

2.11 However, in spite of the report of the High Commissioner dated 13.08.2011, a warning letter dated 23.09.2011 was issued to the petitioner by ICCR wherein serious allegations were made against the petitioner. For the sake of convenience, the contents of the warning letter are reproduced herein below:-

“INDIAN COUNCIL FOR CULTURAL RELATIONS

No.ICC/566/19/2010

23<sup>rd</sup> September, 2011

OFFICE MEMORANDUM

Consequent upon continued complaints received from various quarters concerning you, namely Shri Vinod Kumar Sandlesh, Director, Indian Cultural Centre, Johannesburg, is hereby conveyed that ICCR has taken a very serious view on the complaints and decided that you may be recalled, if your performance does not improve by the end of this year. You have been found lacking in the commitment focusing on Indian Cultural Centre, its resources & people, whether it is establishment of the Centre, its immediate renovation for its projection as an Indian Cultural Centre, organizing classes as per GOI mandate, good relation with your colleagues and teachers & maintain contacts with local educational, cultural and creative organizations. You are advised to be more tactful in handling the resource persons who are deputed by ICCR and well utilize their area of expertise while running the Cultural Centre. ICCR have also noted with regret your organizing distasteful functions against Indian ethos. ICCR would be keeping close watch on your activities and conveys you a serious warning that if

your performance during the end of this year or if there is any such complaint in any quarter, you may be recalled.

This issues with the approval of competent authorities.

(R.K. Srivastava)  
Sr. Programme Director (ICC)

Shri Vinod Kumar Sandlesh  
Director  
Indian Cultural Centre  
Consulate General of India  
Johannesburg, South Africa”

(underlining added)

2.12 After the issuance of the said warning letter, one Ms Pratishta, on 5<sup>th</sup> December, 2011, made a complaint against the petitioner to the Ministry of External Affairs alleging that she was sexually harassed by the petitioner while discharging her duties in ICC. An inquiry was set up pursuant to her complaint and an explanation was sought from the petitioner in regard to the complaint of Ms Pratishta.

2.13 On 10<sup>th</sup> December, 2011, the petitioner made a representation to ICCR requesting them to withdraw the warning letter dated 23.09.2011 issued by them.

2.14 Despite the request of the petitioner for recalling the warning letter issued by ICCR, the Respondent ICCR passed an order dated 19.12.2011 whereby the petitioner was directed to relinquish the charge of Director, ICC, Johannesburg and return to India with immediate effect. The recall order is extracted below:-

“INDIAN COUNCIL FOR CULTURAL RELATIONS

No.ICC/566/12/2010

19 December, 2011

OFFICE ORDER

It has been decided to recall Shri Vinod Kr. Sandlesh, Director, Indian Cultural Centre, Johannesburg immediately.

Shri Sandlesh is required to relinquish charge of the post at ICC, Johannesburg immediately and return to India by 31.12.2011 after availing usual preparation time.

This issues with the approval of the competent authority.

(Anwar Haleem)

Dy. Director General (AH)

Shri Vinod Kumar Sandlesh

Director

Indian Cultural Centre

Consulate General of India

Johannesburg, S. Africa”

2.15 On the same day i.e., 19.12.2011, the High Commissioner wrote to ICCR that as the decision to recall the petitioner is based upon the complaint of Ms. Pratishta, the same should be put on hold till the finding of the complaint committee against sexual harassment is made available.

2.16 The services of the petitioner with ICCR was thereafter, terminated by ICCR by way of Corrigendum dated 18.01.2012. It is stated in the said corrigendum that ICCR, respondent No.2, terminated the services of the petitioner by invoking Clause 4(c) of the Agreement executed between the parties on 19.01.2011. The said corrigendum is reproduced below:-

“No.ICC/566/12/2010 Dated 18<sup>th</sup> January, 2012

#### CORRIGENDUM

In continuation to the Office Order dated 19.12.2011 whereby you were required to relinquish charge of the post of Director, ICC, Johannesburg and return to India by the 31<sup>st</sup> December, 2011. It is stated that the said order stands amended to the extent that the same shall be deemed to be a Notice under Clause 4. Sub clause (c) of the Memorandum of Agreement dated 19.01.2011 entered into between the ICCR and you governing the terms and conditions of your assignment as Director, ICC, Johannesburg. Therefore in terms of the provisions of Clause 4 sub clause (c) you are hereby given 3 months salary in lieu of the notice period of 3 calendar months. The instant should be treated as a Notice of termination of your assignment as Director, ICC, Johannesburg and shall be effective from the date of service of the notice.

It is also brought to your Notice that the Consulate General of India, Johannesburg is hereby authorized to disburse to you 3 months salary and related allowances as full and final settlement of your dues provided for under the provisions of Clause 4 sub Clause (c) of the memorandum of agreement dated 19.01.2011. Kindly acknowledge receipt of the same.

The instant corrigendum issues with the approval of the competent authority.

(Anwar Heleem)  
Dy. Director General (AH)”

2.17 Immediately, thereafter, the petitioner approached the Tribunal against the issuance of the recall letter dated 19.12.2011 by way of OA No. 4640/2011 filed on 26.12.2011. In the said OA, the Tribunal, by its order dated 27.12.2011, directed the respondent ICCR and union of India not to force the petitioner to relinquish the post of Director, ICC, Johannesburg.

2.18 The High Commissioner in his letter dated 26.12.2011 reiterated that Mr. Anwar Haleem, Dy. Director, ICCR, respondent No.4, during his surprise visit to ICC Johannesburg had not followed due process while conducting an enquiry against the petitioner.

2.19 Subsequently, the petitioner also challenged the warning letter dated 23.09.2011 before the Tribunal by way of OA No. 156/2012.

2.20 The respondent No. 2 ,ICCR, in its reply dated 18.01.2012 to OA No. 4640/2011 revealed before the Tribunal that the petitioner had been recalled by ICCR by invoking Clause 4(c) of the Memorandum of Agreement dated 19.01.2011 and the services of the petitioner had been terminated subsequently by a corrigendum dated 18<sup>th</sup> of January, 2011.

2.21 Aggrieved by the issuance of Corrigendum dated 18.01.2011, the petitioner filed another Original Application before the Tribunal which was numbered as OA No. 313/2012.

2.22 On 16.02.2012, all the three OA's, that is, OA No. 4640/2011, OA No. 156/2012 and OA No. 313/ 2012 were clubbed together and thereafter, were dismissed by way of a common order dated 10.07.2012 which is impugned before us.

Submissions of behalf of the petitioner:

3. Mr R. Venkatramani, Senior Advocate, appearing on behalf of the petitioner submitted that the petitioner had been appointed on deputation as Director of ICC with the diplomatic rank of First Secretary on the recommendation of Foreign Services Board and with the approval of the Ministry of External Affairs for a period of three years. It was submitted that although the engagement of the petitioner as Director of ICC at Johannesburg was subject to the provisions of the agreement which was executed between the petitioner and ICCR, the respondent ICCR could not arbitrarily and without reason shorten the tenure of thee years as it did by virtue of the recall order dated 19.12.2011 and the corrigendum dated 18.01.2012. The learned counsel also submitted that the warning letter dated 23.09.2011 was also bad in law as it was preceded by an inquiry of which the petitioner had no notice of.

4. Mr R. Venkatramani further submitted that the Tribunal brushed aside the High Commissioner's Report wherein he had noticed that the complaint made by Mr Dixit was false and that the petitioner was being targeted only because he had sought to bring about a semblance of discipline at the ICC. It was also submitted that despite the report of the High Commissioner, the ICCR deputed Mr Anwar Haleem (respondent No.4) (Deputy Director, ICCR) to visit ICC, Johannesburg on 10.08.2011 who conducted an inquiry in a secretive manner without the knowledge of the petitioner or the High Commissioner. It was also pointed out that the report submitted by Mr Haleem was an ex-parte report and the contents of which were never shared with the petitioner and as such the petitioner was denied the opportunity to know and / or to controvert the allegations leveled against him. It was further submitted by Mr R. Venkatramani that the ICCR and indeed the Tribunal had also ignored the complaint of Mrs Dhayani who had alleged that her e-mails had been hacked by Ms Prathishtha Saraswat, the yoga teacher who subsequently made a complaint of sexual harassment against the petitioner.

5. It was contended that the alleged secretive inquiry conducted by Mr Anwar Haleem culminated in the warning letter dated 23.09.2011. However, without any reason or justification or any fresh cause of action, the respondent issued the recall order dated 19.12.2001 allegedly only on the basis of the report of Mr Haleem. The learned counsel for the petitioner also submitted that the corrigendum dated 18.11.2012 invoking clause 4 (c)

of the Agreement dated 19.01.2011, was itself unconscionable, unreasonable and arbitrary and was therefore invalid.

6. It was contended that the petitioner had a right to be heard and to be treated fairly even if his terms of engagement were under a contract. For this proposition, the learned counsel placed reliance on the Supreme Court decision in the case of *Kumari Shrilekha Vidyarthi v. State of U.P.: 1991 (1) SCC 212*. He further submitted that the petitioner deserved the compliance of the minimum requirement of natural justice inasmuch as the petitioner had suffered civil consequences which deserved protection. Reliance was placed by the learned counsel on *S.L. Kapoor v. Jagmohan: 1980 (4) SCC 379*. It was submitted that the warning letter itself constituted a punishment. In any event, the issuance of the warning letter meant that all alleged prior misconducts were condoned. In this backdrop it was submitted that in the absence of any further adverse factor, the petitioner could not have been recalled and it was submitted that the petitioner cannot be punished twice for the same alleged misconduct.

7. It was also submitted that the warning letter as well as the recall letter and the corrigendum would form part of the petitioner's service record. That, in itself, would entail that the recall of the petitioner was stigmatic. Since the petitioner did not have any opportunity of hearing prior to his recall, the impugned warning letter, recall order and the corrigendum must go.

8. The learned counsel for the petitioner also placed reliance on the Supreme Court decision in the case of **Union of India v. V Ramakrishnan: 2005 (8) SCC 394** in order to explain the scope of deputation and the rights of a deputationist. Reliance was also placed on the Supreme Court decision in the case of **K.H. Phadnis v. State of Maharashtra: 1971 (1) SCC 790** which was also concerned with the order of repatriation to a parent department. The question was whether such an order would be by way of a punishment. According to the learned counsel for the petitioner, the recall order as well as the corrigendum amounted to a repatriation to the parent department and that too without any inquiry and therefore it would amount to punishment which would be violative of Article 311 of the Constitution.

9. In totality, it was submitted by the learned counsel for the petitioner that the warning letter dated 23.09.2011 (subject matter of OA 156/2012), the recall order dated 19.12.2011 (subject matter of OA 4640/2011) and the corrigendum dated 18.01.2012 (subject matter of OA 313/2012) are all liable to be set aside and ought to be set aside.

**Submissions on behalf of the respondents:**

10. The learned counsel appearing on behalf of the UOI / ICCR submitted that the common order passed by the Tribunal which is impugned in this writ petition does not call for any interference. He submitted that in the present case the petitioner was under the direct administrative control of ICCR and his terms of engagement were governed solely by Memorandum of Agreement dated 19.01.2011. It was submitted

that the petitioner had taken charge of the post of Director, ICC, Johannesburg in the month of January 2011. From June 2011 onwards, a stream of complaints started coming in against the petitioner. It was contended that as things did not improve, the ICCR decided to depute a senior officer to visit the centre and to assess the ground reality. As such, a senior officer of ICCR visited ICC, Johannesburg, and conducted a preliminary inquiry into the said allegation. A detailed report was submitted by the said officer to the competent authority in the ICCR and, based on the said report, the Director General ICCR and the President, ICCR, were of the considered opinion that the petitioner should be let off with a warning so as to enable him to improve his performance in future. It was contended that based upon the aforesaid, the warning letter dated 23.09.2011 was issued to the petitioner with the hope that the entire issue could be given a quietus and that things will improve at the ICC at Johannesburg. The learned counsel for the respondent also pointed out that in the complaint, one of the parties involved was Mr Dixit, the Tabla teacher, who had been recalled. The learned counsel reiterated that the warning letter dated 23.09.2011 made it clear to the petitioner that in case he did not improve his performance by 31.12.2011 he would be recalled.

11. It was further contended by the learned counsel for the respondents that the appraisal of the work performance of all Directors at various cultural centres' world-wide was an ongoing process and that in December 2011 it was decided by the ICCR that due to the continued decline of the performance and several controversies, it would be in the best interest of

India as well as India's Diplomatic Mission in South Africa that the ICC, Johannesburg, should remain free from any controversy which may soil the name of the country. Consequently, the recall order dated 19.12.2011 was served upon the petitioner. Since the recall order did not specifically mention the provisions of clause 4(c) of the Agreement dated 19.01.2011, a corrigendum dated 18.01.2011 was served upon the applicant in continuance of the earlier order of recall. It was contended that the issuance of the recall order as also the corrigendum was well within the powers of ICCR under the Agreement dated 19.01.2001. Consequently, it was submitted that the action of the ICCR was un-assailable and was valid in law.

12. It was also contended that once the petitioner had accepted the deputation based on the terms and conditions contained in the Agreement dated 19.01.2011, the petitioner could not now raise any grievance with regard to the conditions contained in it and, in particular, with regard to clause 4(c) thereof. It was also submitted that the so-called inquiry conducted by Mr Anwar Haleem was merely a preliminary inquiry and even otherwise the ICCR had found the petitioner to be lacking in vision and that he had no experience in implementing cultural projects which would be to the benefit of India. It was also pointed out that when the warning letter dated 23.09.2011 had been issued to the petitioner, the petitioner did not challenge the same. The challenge to the warning letter came after the recall order dated 19.12.2011 was served upon the petitioner and after the petitioner had filed OA No. 4640/2011 on 26.12.2011

challenging the recall order. Even in that OA, that is, OA 4640/2011 the warning letter was not challenged. The warning letter dated 23.09.2011 was only challenged in 2012 by virtue of OA No. 156/2012 and, according to the learned counsel for the respondent, it was merely an afterthought.

13. It was contended by the learned counsel for the respondents that there is no question of any violation of the provision of Article 311 of the Constitution inasmuch as the services of the petitioner as a permanent government servant had not been affected at all. The only thing that has happened is that the petitioner, who was on deputation, as Director ICC, Johannesburg, has been recalled. He continues as a permanent government servant under the Union of India. It was also submitted that neither the warning letter nor the recall order nor the corrigendum were stigmatic. It is in terms of clause 4(c) of the said Agreement dated 19.01.2011 that the petitioner has been recalled from ICC, Johannesburg, to India. It was submitted that the petitioner cannot claim to continue at Johannesburg despite the fact that his work was unsatisfactory and was not in consonance with the ideals and objectives of ICCR.

Discussion:

14. One of the points raised by the learned counsel for the petitioner was that the so-called inquiry which was conducted by Mr Anwar Haleem was conducted in secrecy and his report was an ex-parte report and it is this report which led to the issuance of the warning letter dated 23.09.2011. As pointed out by the learned counsel for the respondent, the inquiry

conducted by Mr Anwar Haleem was only a preliminary inquiry which led to the issuance of the warning letter. That letter was not by way of punishment nor did it amount to a stigma being attached to the petitioner inasmuch as it was not a recorded warning. It was only a letter informing the petitioner to improve his performance and not by way of punishment. Therefore, the contention of the learned counsel for the petitioner cannot be accepted.

15. It had been contended by the learned counsel for the petitioner that as no fresh cause of action had arisen after the issuance of warning letter dated 23.09.2011, the recall order dated 19.12.2011 and the corrigendum dated 18.01.2012 could not have been issued. Here, too, the submission is not tenable. This is so because independent of the warning letter, clause 4(c) of the Agreement dated 19.01.2011 could be invoked. It was not dependent upon the warning letter and the only question to be asked is whether the respondent could have invoked clause 4(c) of the Agreement dated 19.11.2011 and as to whether that clause was a valid and legally binding one on the parties. That is a separate issue which we shall deal with below. But, to say that, unless and until there was a fresh cause of action after the issuance of warning letter, the recall order could not have been issued by invoking clause 4(c) of the Agreement dated 19.01.2011 would not be correct.

16. The learned counsel for the petitioner, as pointed out above, has placed reliance on the Supreme Court decision in the case of **Kumari**

**Shrilekha Vidyarthi** (*supra*). In that case, by one stroke, the government of U.P had terminated, by a general order, the appointments of all government counsel (civil, criminal & revenue) in all the districts of State of U.P with effect from 28.02.1990 and had directed preparation of a fresh panel to make appointments in place of the existing incumbents. The validity of that State action was in challenge before the Supreme Court. The Supreme Court upheld the challenge and quashed the impugned circulars. While doing so the Supreme Court considered the question as to whether the circulars were amenable to judicial review or not. Obviously, the Supreme Court held that as the circulars entailed a public element, therefore, they were amenable to judicial review.

17. The Supreme Court also held that even if the public element was kept aside and the appointments were regarded to be purely contractual, judicial review would still be permissible in order to examine as to whether Article 14 has been violated or not. The Supreme Court, in **Kumari Shrilekha Vidyarthi** (*supra*), also observed as under:-

“22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain

of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

**23.** Thus, in a case like the present, if it is shown that the impugned State action is arbitrary and, therefore, violative of Article 14 of the Constitution, there can be no impediment in striking down the impugned act irrespective of the question whether an additional right, contractual or statutory, if any, is also available to the aggrieved persons.

**24.** The State cannot be attributed the split personality of Dr Jekyll and Mr Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of

requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity.”

We do not see as to how the observations in **Kumari Shrilekha Vidyarthi** (*supra*) comes to the aid of the petitioner. Nobody is disputing the fact that the conduct of the respondents in the present case is not amenable to judicial review. The question is whether the action taken by the respondents in recalling the petitioner pre-maturely from Johannesburg is illegal and in violation of Article 14 of the Constitution of India. Whether the action of the respondents is arbitrary and unreasonable has to be examined and is being examined. It has not been contended by the learned counsel for the respondent that because the arrangement between the petitioner and the ICCR was contractual therefore judicial review is not permissible. That is not the case of the respondents. The case of the respondents is that their action was within the four corners of the Agreement dated 19.01.2011 and there was nothing arbitrary in recalling the petitioner from Johannesburg nor was this actuated by malafides. Therefore, we do not see as to how the decision in **Kumari Shrilekha Vidyarthi** (*supra*) would be of any help to the petitioner.

18. The learned counsel for the petitioner had also placed reliance on the Supreme Court decision in **S.L. Kapoor** (*supra*) in support of the plea that whenever a person is visited with civil consequences the minimum requirements of natural justice have to be fulfilled. The petitioner had placed specific reliance on paragraphs 16-17 of the said decision which read as under:-

“**16.** Thus on a consideration of the entire material placed before us we do not have any doubt that the New Delhi Municipal Committee was never put on notice of any action proposed to be taken under Section 238 of the Punjab Municipal Act and no opportunity was given to the Municipal Committee to explain any fact or circumstance on the basis that action was proposed. If there was any correspondence between the New Delhi Municipal Committee and any other authority about the subject-matter of any of the allegations, if information was given and gathered it was for entirely different purposes. In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a “double opportunity” that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. We disagree with the finding of the High Court that the Committee had the opportunity to meet the allegations contained in the order of supersession.

**17.** Linked with this question is the question whether the failure to observe natural justice does at all matter if the

observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary.”

19. It was contended that the petitioner had been appointed to the post of Director, ICC, for a period of three years and therefore he had a legitimate expectation that he would continue till the end of three years. If he were required to be recalled prior to that period, then it would entail civil consequences and this could not be done, according to the learned counsel for the petitioner without satisfying the minimum requirement of an opportunity of hearing as a rule of natural justice. We cannot detract from the general principle laid down in **S.L. Kapoor** (*supra*) but this does not enable us to ignore the terms of arrangement between the petitioner and ICCR which also included clause 4(c) of the Agreement dated 19.01.2011. The so-called civil consequence which the petitioner is said to have suffered was that he was recalled before the term of three years expired. It is not as if his services have been terminated without opportunity of hearing. The question once again is whether the recall of the petitioner falls within the Agreement between him and the ICCR or not?

20. This takes us to the decision of the Supreme Court in the case of *Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly: 1986 (3) SCC 156* which was relied upon by the learned counsel for the petitioner. In that decision the validity of rule 9(i) of the Central Inland Water Transport Corporation Limited Service Discipline and Appeal Rules, 1979 was in question. The said rule 9(i) was as under:-

*“9. Termination of employment for Acts other than misdemeanour.— (i) The employment of a permanent employee shall be subject to termination on three months' notice on either side. The notice shall be in writing on either side. The Company may pay the equivalent of three months' basic pay and dearness allowance, if any, in lieu of notice or may deduct a like amount when the employee has failed to give due notice.”*

21. With regard to the validity of rule 9(i), the Supreme Court observed as under:-

**“94.** We will now test the validity of Rule 9(i) by applying to it the principle formulated above. Each of the contesting respondents was in the service of the Rivers Steam Navigation Company Limited and on the said Scheme of Arrangement being sanctioned by the Calcutta High Court, he was offered employment in the Corporation which he had accepted. Even had these respondents not liked to work for the Corporation, they had not much of a choice because all that they would have got was “all legitimate and legal compensation payable to them either under the Industrial Disputes Act or otherwise legally admissible”. These respondents were not covered by the Industrial Disputes Act for they were not workmen but were officers of the said company. It is, therefore, difficult to visualize what compensation they would have been entitled to

get unless their contract of employment with their previous employers contained any provision in that behalf. So far as the original terms of employment with the Corporation are concerned, they are contained in the letters of appointment issued to the contesting respondents. These letters of appointment are in a stereotype form. Under these letters of appointment, the Corporation could without any previous notice terminate their service, if the Corporation was satisfied on medical evidence that the employee was unfit and was likely for a considerable time to continue to be unfit for the discharge of his duties. The Corporation could also without any previous notice dismiss either of them, if he was guilty of any insubordination, intemperance or other misconduct, or of any breach of any rules pertaining to his service or conduct or non-performance of his duties. The above terms are followed by a set of terms under the heading "Other Conditions". One of these terms stated that: "You shall be subject to the service rules and regulations including the conduct rules." Undoubtedly, the contesting respondents accepted appointment with the Corporation upon these terms. They had, however, no real choice before them. Had they not accepted the appointments, they would have at the highest received some compensation which would have been probably meagre and would certainly have exposed themselves to the hazard of finding another job.

**95.** It was argued before us on behalf of the contesting respondents that the term that these respondents would be subject to the service rules and regulations including the conduct rules, since it came under the heading "Other Conditions" which followed the clauses which related to the termination of service, referred only to service rules and regulations other than those providing for termination of service and, therefore, Rule 9(i) did not apply to them. It is unnecessary to decide this question in the view which we are inclined to take with respect to the validity of Rule 9(i).

**96.** The said Rules as also the earlier rules of 1970 were accepted by the contesting respondents without demur. Here again they had no real choice before them. They had risen higher in the hierarchy of the Corporation. If they had refused to accept the said Rules, it would have resulted in termination of their service and the consequent anxiety, harassment and uncertainty of finding alternative employment.

**97.** Rule 9(i) confers upon the Corporation the power to terminate the service of a permanent employee by giving him three months' notice in writing or in lieu thereof to pay him the equivalent of three months' basic pay and dearness allowance. A similar regulation framed by the West Bengal State Electricity Board was described by this Court in *W.B. State Electricity Board v. Desh Bandhu Ghosh* [(1985) 3 SCC 116 : 1985 SCC (L&S) 607] : (at SCC p. 118, para 4) as “... a naked ‘hire and fire’ rule, the time for banishing which altogether from employer-employee relationship is fast approaching. Its only parallel is to be found in the Henry VIII clause so familiar to administrative lawyers.”

As all lawyers may not be familiar with administrative law, we may as well explain that “the Henry VIII clause” is a provision occasionally found in legislation conferring delegated legislative power, giving the delegate the power to amend the delegating Act in order to bring that Act into full operation or otherwise by order to remove any difficulty, and at times giving power to modify the provisions of other Acts also. The Committee on Ministers' Powers in its report submitted in 1932 (Cmd. 4060) pointed out that Such a provision had been nicknamed “the Henry VIII clause” because “that King is regarded popularly as the impersonation of executive autocracy”. The Committees' Report (at p. 61) criticised these clauses as a temptation to slipshod work in the preparation of bills and recommended that such provisions should be used only where they were justified before Parliament on compelling grounds. Legislation enacted by Parliament in the

United Kingdom after 1932 does not show that this recommendation had any particular effect.

**98.** No apter description of Rule 9(i) can be given than to call it “the Henry VIII clause”. It confers absolute and arbitrary power upon the Corporation. It does not even state who on behalf of the Corporation is to exercise that power. It was submitted on behalf of the appellants that it would be the Board of Directors. The impugned letters of termination, however, do not refer to any resolution or decision of the Board and even if they did, it would be irrelevant to the validity of Rule 9(i). There are no guidelines whatever laid down to indicate in what circumstances the power given by Rule 9(i) is to be exercised by the Corporation. No opportunity whatever of a hearing is at all to be afforded to the permanent employee whose service is being terminated in the exercise of this power. It was urged that the Board of Directors would not exercise this power arbitrarily or capriciously as it consists of responsible and highly placed persons. This submission ignores the fact that however highly placed a person may be, he must necessarily possess human frailties. It also overlooks the well-known saying of Lord Acton, which has now almost become a maxim, in the appendix to his “*Historical Essays and Studies*”, that: “Power tends to corrupt, and absolute power corrupts absolutely.” As we have pointed out earlier, the said Rules provide for four different modes in which the services of a permanent employee can be terminated earlier than his attaining the age of superannuation, namely, Rule 9(i), Rule 9(ii), sub-clause (iv) of clause (b) of Rule 36 read with Rule 38 and Rule 37. Under Rule 9(ii) the termination of service is to be on the ground of: “Services no longer required in the interest of the Company.” Sub-clause (iv) of clause (b) of Rule 36 read with Rule 38 provides for dismissal on the ground of misconduct. Rule 37 provides for termination of service at any time without any notice if the employee is found guilty of any of the acts mentioned in that rule. Rule 9(i) is the only rule which does not state in what circumstances the

power conferred by that rule is to be exercised. Thus, even where the Corporation could proceed under Rule 36 and dismiss an employee on the ground of misconduct after holding a regular disciplinary inquiry, it is free to resort instead to Rule 9(i) in order to avoid the hassle of an inquiry. Rule 9(i) thus confers an absolute, arbitrary and unguided power upon the Corporation. It violates one of the two great rules of natural justice — the audi alteram partem rule. It is not only in cases to which Article 14 applies that the rules of natural justice come into play. As pointed out in *Union of India v. Tulsiram Patel* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] : (at SCC p. 463, para 72) “The principles of natural justice are not the creation of Article 14. Article 14 is not their begetter but their constitutional guardian.” That case has traced in some detail the origin and development of the concept of principles of natural justice and of the audi alteram partem rule (at pp. 463-80). They apply in diverse situations and not only to cases of State action. As pointed out by O. Chinnappa Reddy, J., in *Swadeshi Cotton Mills v. Union of India* [(1981) 1 SCC 664] they are implicit in every decision-making function, whether judicial or quasi-judicial or administrative. Undoubtedly, in certain circumstances the principles of natural justice can be modified and, in exceptional cases, can even be excluded as pointed out in *Tulsiram Patel case* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] . Rule 9(i), however, is not covered by any of the situations which would justify the total exclusion of the audi alteram partem rule.

**99.** The power conferred by Rule 9(i) is not only arbitrary but is also discriminatory for it enables the Corporation to discriminate between employee and employee. It can pick up one employee and apply to him clause (ii) of Rule 9. It can pick up another employee and apply to him clause (d) of Rule 9. It can pick up yet another employee and apply to him sub-clause (iv) of clause (b) of Rule 36 read with Rule 38 and to yet another employee it can apply Rule 37. All this the Corporation can do when the same circumstances exist as would justify the Corporation in holding under Rule 38 a

regular disciplinary inquiry into the alleged misconduct of the employee. Both the contesting respondents had, in fact, been asked to submit their explanation to the charges made against them. Sengupta had been informed that a disciplinary inquiry was proposed to be held in his case. The charges made against both the respondents were such that a disciplinary inquiry could easily have been held. It was, however, not held but instead resort was had to Rule 9(i).

**100.** The Corporation is a large organization. It has offices in various parts of West Bengal, Bihar and Assam, as shown by the said Rules, and possibly in other States also. The said Rules form part of the contract of employment between the Corporation and its employees who are not workmen. These employees had no powerful workmen's Union to support them. They had no voice in the framing of the said Rules. They had no choice but to accept the said Rules as part of their contract of employment. There is gross disparity between the Corporation and its employees, whether they be workmen or officers. The Corporation can afford to dispense with the services of an officer. It will find hundreds of others to take his place but an officer cannot afford to lose his job because if he does so, there are not hundreds of jobs waiting for him. A clause such as clause (i) of Rule 9 is against right and reason. It is wholly unconscionable. It has been entered into between parties between whom there is gross inequality of bargaining power. Rule 9(i) is a term of the contract between the Corporation and all its officers. It affects a large number of persons and it squarely falls within the principle formulated by us above. Several statutory authorities have a clause similar to Rule 9(i) in their contracts of employment. As appears from the decided cases, the West Bengal State Electricity Board and Air India International have it. Several government companies apart from the Corporation (which is the first appellant before us) must be having it. There are 970 government companies with paid-up capital of Rs 16,414.9 crores as stated in the written arguments submitted on behalf of the Union of India. The government and its agencies and instrumentalities

constitute the largest employer in the country. A clause such as Rule 9(i) in a contract of employment affecting large sections of the public is harmful and injurious to the public interest for it tends to create a sense of insecurity in the minds of those to whom it applies and consequently it is against public good. Such a clause, therefore, is opposed to public policy and being opposed to public policy, it is void under Section 23 of the Indian Contract Act.

**101.** It was, however, submitted on behalf of the appellants that this was a contract entered into by the Corporation like any other contract entered into by it in the course of its trading activities and the court, therefore, ought not to interfere with it. It is not possible for us to equate employees with goods which can be bought and sold. It is equally not possible for us to equate a contract of employment with a mercantile transaction between two businessmen and much less to do so when the contract of employment is between a powerful employer and a weak employee.

**102.** It was also submitted on behalf of the appellants that Rule 9(i) was supported by mutuality inasmuch as it conferred an equal right upon both the parties, for under it just as the employer could terminate the employee's service by giving him three months' notice or by paying him three months' basic pay and dearness allowance in lieu thereof, the employee could leave the service by giving three months' notice and when he failed to give such notice, the Corporation could deduct an equivalent amount from whatever may be payable to him. It is true that there is mutuality in Rule 9(i)—the same mutuality as in a contract between the lion and the lamb that both will be free to roam about in the jungle and each will be at liberty to devour the other. When one considers the unequal position of the Corporation and its employees, the argument of mutuality becomes laughable.

**103.** The contesting respondents could, therefore, have filed a civil suit for a declaration that the termination of their service

was contrary to law on the ground that the said Rule 9(i) was void. In such a suit, however, they would have got a declaration and possibly damages for wrongful termination of service but the civil court could not have ordered reinstatement as it would have amounted to granting specific performance of a contract of personal service. As the Corporation is “the State”, they, therefore, adopted the far more efficacious remedy of filing a writ petition under Article 226 of the Constitution.”

From the above extracts the single most important thought running through the same is that the employees therein had no real choice, either they agreed to the said rule 9(i) or they would not be employed at all. Furthermore, there were no guidelines whatever, laid down to indicate in what circumstances the power given by rule 9(i) was to be exercised by the corporation. No opportunity whatsoever of a hearing was at all to be afforded to a permanent employee whose service was being terminated in exercise of that power. That decision is clearly distinguishable inasmuch as clause 4(c) does not in any way alter position of the petitioner as a permanent government servant whereas rule 9(i) could entail the termination of service of a permanent employee of the Corporation. This is not the case here and, therefore, no parallel can be drawn between rule 9(i) in the case before the Supreme Court and clause 4(c) in the present case. Consequently, no benefit can be derived by the petitioner from the said decision of the Supreme Court.

22. The learned counsel for the petitioner had placed reliance on **Union of India v. V. Ramakrishnan** (*supra*). Particular stress was laid on the

observation in paragraphs 32 and 35 of the said decision which read as under:-

**“32.** Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post-haste manner also indicates malice.<sup>1</sup>

**35.** In *Parshotam Lal Dhingra*,<sup>2</sup> it is categorically stated that when an appointment is made for a specific period, unless any disciplinary proceeding is initiated, a person will be entitled to hold the said post.”

23. From the above observation itself it is clear that ordinarily a deputationist has no legal right to continue in the post nor does he have a right to be absorbed in the post in which he is deputed. It was observed that when the tenure of the deputationist is specific, despite the fact that the deputationist does not have an indefeasible right to hold the said post, ordinarily the term of the deputationist should not be curtailed except on such just grounds as, for example, unsuitability and unsatisfactory

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<sup>1</sup> See *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia* [(2004) 2 SCC 65] Para 25.

<sup>2</sup> 1958 SCR 828 = AIR 1958 SC 36

performance. In the present case the tenure of the petitioner was for three years. It is obvious that ordinarily this term ought not to have been curtailed but the fact remains that there is no bar in curtailing the tenure provided it is for just grounds such as unsuitability and unsatisfactory performance. This is exactly what has happened in the present case. We must also remember that in *Union of India vs. V Ramakrishnan* (*supra*), a clause such as 4(c) of the Agreement dated 19.01.2011 was not in question and therefore on that ground also the situation is somewhat different and distinguishable.

24. Lastly we need to consider the decision in *K.S. Phadnis* (*supra*) which was relied upon by the learned counsel for the petitioner. But we find that the case was concerned with whether reversion to the parent organization on repatriation would amount to a reduction and therefore would be punitive or not. In the present case there is no reduction in rank and, therefore, the said decision would not apply to the present case.

25. In view of the aforesaid discussion, we see no merit in this writ petition. The same is dismissed with no orders as to costs.

**BADAR DURREZ AHMED, J**

**SIDDHARTH MRIDUL, J**

**NOVEMBER 20, 2012**

**kb**