

(2013) 10 AHC CK 0127**Allahabad High Court****Case No:** Writ A. No. 60159 of 2013

Anamika Yadav

APPELLANT

Vs

Chairman and M.D., Union Bank
of India

RESPONDENT

Date of Decision: Oct. 31, 2013**Citation:** (2014) 104 ALR 61**Hon'ble Judges:** Abhinava Upadhyा, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Abhinava Upadhyा, J.

Heard learned Counsel for the petitioner and Sri Vivek Ratan, learned Counsel appearing for all the respondents. By means of this writ petition, the petitioner has challenged the order by which the engagement of the petitioner has been dispensed with by the Bank. The petitioner was engaged on fixed amount for a fixed term on contract basis. The petitioner was to perform functions as mentioned in the contract. The Bank has passed an order to the effect that the target fixed in the contract could not be achieved by the petitioner and, therefore, his services are no longer required by the Bank and terminated the services of the petitioner on 3.10.2013. Learned Counsel for the petitioner submitted that action on the part of the Bank is arbitrary inasmuch as without any notice his services has been terminated. It is, however, claimed that other persons similarly situated whose performance are said to be poorer than the petitioner, are still working. These questions cannot be gone into the writ jurisdiction. If the petitioner is aggrieved by any terms of the contract, he can either approach the Arbitrator or the relevant forum for such breach of contract. Writ petition is not maintainable upon the facts of the present case.

2. Learned Counsel for the petitioner has relied upon the cases in Hindustan Times and Others Vs. State of U.P. and Another, Udai Pratap Singh Vs. State of U.P. and

Committee of Management, Baba Gaya Das Technical Inter College, Surendra Singh Vs. State of U.P. and Others, and Chanda Tamboli v. The Panchayat Samit, Mandal and another 1989 (59) FLR 879 (Raj) The aforesaid decisions relied upon by the learned Counsel for the petitioner are distinguishable from the facts of the present case and in my view are not applicable.

3. The first case relied upon by the learned Counsel for the-petitioner is the case of Hindustan Times and others (supra). The petition was pressed before the Hon"ble Supreme Court under Article 32 of the Constitution of India challenging the validity of an order of State of U.P. whereunder a direction was issued to the effect that at the time of payment of bills for publication of Government advertisements in all newspapers having a circulation of more than 25,000 copies, 5% of the amount thereof, which will form part of a fund for the purposes of granting pension to the working journalists, would be deducted.

4. In defence of the aforesaid order it was contended that issuance of advertisement is a matter of contract and, therefore, the petitioners, who are Newspapers Publishing Company cannot claim any legal right, as they are free not to enter into contract. The Apex Court held that in view of equity doctrine under Article 14 of the Constitution of India the State cannot resort to the theory of take it or leave it.

5. It appears that in the aforesaid case, a contract was entered into and thereafter such a condition was imposed and, therefore, the Hon"ble Supreme Court quashed the aforesaid condition being violative of Article 14 of the Constitution of India.

6. In the present case, the contract was entered into and time being the essence, certain targets were to be achieved, which the petitioner could not achieve and therefore, the contract was terminated. As such, the aforesaid decision does not help the petitioner.

7. The petitioner has then relied upon a decision of Hon"ble Single Judge of this Court in the case of Udai Pratap Singh (supra), wherein the terms and conditions of employment of petitioner therein for payment of honorarium at the rate of Rs. 10/- per period for teaching intermediate classes was held to be violative of section 23 of Contract Act. In the present case, the contract was terminated upon non-achievement of contract. Accordingly, the aforesaid case is also not applicable to the facts of the present case.

8. In the case of Surendra Singh (supra), a Division Bench of this Court held that the petitioner entered into service of U.P. Pollution Control Board on contract till certain period. The said period was extended from time to time. The petitioner was allowed to continue even after expiry of the contracted period. The Bench held, though it is true that contractual obligation cannot be enforced by means of a writ petition but when the petitioner was allowed even after the contracted period then his condition of service will be governed by the Statutory Rules and not merely the contract.

9. The last case of Chanda Tamboli (supra), the Court dealing with practice of terminating the services of the petitioner at the end of the academic session and not providing salary for the summer vacation was held to be arbitrary. This case also upon the facts is not applicable to the facts of the present case.

10. Learned Counsel for the respondents on the other hand has relied upon the decision of Hon'ble Supreme Court in GRIDCO Limited and Another Vs. Sri Sadananda Doloi and Others, wherein the Hon'ble Supreme Court has held that even in appointment on contract, the Courts are not precluded to look into the termination order passed by the Public Authorities even if the action of the authority is in the realm of the contract. At the same time it is further stated that the judicial review cannot extend to the powers of the Court acting as Appellate Court. The Courts cannot sit as Administrator to decide whether more reasonable decision or course of action would have been taken in the circumstances so long as the action taken by the authorities are not shown to be vitiated by the infirmity, the Writ Court would not interfere with the decision under challenge.

11. It is not disputed that there was a contract between the parties and the said contract was terminable even prior to its term. The authorities have given a reason for termination of contract. The said contract being strictly in realm of the business activity of the Bank, the Bank is best to sit as Judge whether the object has achieved the purpose for which such a contract was entered into. No interference is called for and the writ petition is accordingly dismissed.