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**Lt. Col. Guriqbal Singh Vs. Punjab Communications Limited, (a Government Undertaking)**

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**SooperKanoon Citation : [sooperkanoon.com/628230](http://sooperkanoon.com/628230)**

**Court : Punjab and Haryana**

**Decided On : Feb-15-1994**

**Reported in : (1994)107PLR59**

**Judge : Amarjeet Chaudhary, J.**

**Acts : [Constitution of India](#) - Articles 12, 14, 39, 41, 226 and 227; [Contract Act, 1872](#) - Sections 23**

**Appeal No. : Civil Writ Petition No. 8541 of 1992**

**Appellant : Lt. Col. Guriqbal Singh**

**Respondent : Punjab Communications Limited, (a Government Undertaking)**

**Advocate for Def. : A.S. Chahal and; Dalip Chaudhary, Adv.**

**Advocate for Pet/Ap. : Kasturi Lal and; B.M. Lal, Adv.**

**Disposition : Petition allowed**

**Judgement :**

**Amarjeet Chaudhary, J.**

1. This judgment of mine will dispose of C.W.P. 8451 and 11504 of 1992 as the facts and law point canvassed in both the cases are identical. For the purpose of judgement, the facts have been gathered from Civil Writ Petition No. 8541 of 1992 Lt. Col. Guriqbal Singh v. Punjab Communications Ltd.

2. In this writ petition, the question cropped up for consideration is whether on the completion of the probationary period the services of an officer can be terminated by giving three months notice or pay in lieu thereof, or not?

3. The petitioner was appointed as Deputy Manager vide Order dated 20-7-1990, a copy of which is Annexure P-1 to the writ petition, in the pay scale of Rs. 2400-100-3000-125-3500. the terms of conditions of the appointment were mentioned in the appointment letter. The petitioner was confirmed in the respondent-Company vide order dated 14.12.1991, a copy of which is Annexure P-2 to the writ petition. To the petitioner's great dismay, his service were dispensed which vide order dated 29-6-1992, copy of which is Annexure P-4 to the petition by invoking para 3 of the terms and conditions of the appointment letter No. PC1VEx-40-1 dated 20-07-1990. The said provision of the letter reads:-

'3 After successful completion of the probation, about which you will be informed in writing, you will be confirmed in writing, you will be confirmed in the service of the company. Your services, however would be terminable on three months notice or pay thereof on either side.

4. Aggrieved against the order of termination of services, the petitioner has invoked the jurisdiction of this court by filing the present writ petition under Articles 226/227 of the [Constitution of India](#) for quashing the impugned order of termination with the prayer that para 3 of the appointment letter be declared void ab initio and ineffective. The said condition is arbitrary and unreasonable because it gives absolute unguided power to the Corporation. The Counsel for the petitioner contended that the said provision is violative of Article 14 of the [Constitution of India](#) and directive principles.

5. Learned Counsel appearing for the respondent contended that the respondent-corporation is a private limited company and as such the writ petition deserves to

be dismissed being not maintainable.

6. I have considered the submissions of the learned Counsel for the parties and have gone through the record.

7. The question for consideration is whether the respondent Corporation is State or not. The relevant test to determine whether the expression 'other authorities' as contained in Article 12 of the [Constitution of India](#) would include within its ambit Corporation, was laid down by the Supreme Court in *Ramana Dayaram Shetty v. International Airport Authority of India*, A.I.R. 1979 S.C. 1628. Subsequently, in *Ajay Hasia v. Khalid Maujib Sehravardi*, A.I.R. 1981 S.C. 487, the Court enlarged the concept of the 'instrumentality' or agency of the Government of India in holding that it is not limited to a 'Corporation' created by the Statute but it is as well applicable to the Government Company or Society.

8. In the above mentioned case, the Hon'ble Supreme Court held that 'even private body or a Corporation may, however, be included within the definition of State, if it acts as an agency of the Government'. This view was taken by the Supreme Court in *Sukhdev v. Bhagat Ram*, A.I.R. 1975 S.C. 1331.

9. In determining whether a Corporation or Government Company or a private Body is an instrumentality or Agency of State amongst others, the following tests would be applicable:-

(a) The volume of financial assistance received from the State.

(b) The quantum of State control etc.

In the matter of *Pyare Lal Sharnia v. J & K Industries Limited*, A.I.R. 1985 J & K 33(F.B) it was held that:-

'If on consideration of various facts, it is found that the Corporation is an instrumentality or an agency of the Government then it would be an 'Authority' and, therefore, 'State' within the meaning of the expression in Article 12 of the [Constitution of India](#). The concept of instrumentality or agency is not limited to a corporation but is equally applicable to a Company or Society and in a given case

it would have to be decided on consideration of relevant factors whether the company or Society is an instrumentality or an agency of the Government so as to come within the meaning of the expression 'Authority' in Article 12 of the [Constitution of India](#) which is amenable to the writ jurisdiction of the High Court.'

The Respondent-Corporation is receiving full financial assistance from the State and the State has full control over it. As such the Respondent-Corporation is State within the ambit of Article 12, against which a writ is maintainable.

10. Now coming to the case on merits, In *Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly*; A.I.R. 1986 S.C. 1571, the Supreme Court held-Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules (1979), Rule 9 (1) empowering Corporation to terminate the services of permanent employees without giving any reasons and by giving notice, is void under S. 23 of Contract Act as being opposed to public policy, it is also ultra vires under Article 14 of [Constitution of India](#) and also violative of Directive Principles contained in Article 39(a) and 41.

11. In *Bhupinder Dev Jain v. The Haryana Breweries Ltd.* , 1992 (2) R.S.J. 383 the challenge was to Bye-law 3.2 of the Haryana State Industrial Development Corporation Employees Service Bye-laws. The said Bye-law reads as:-

'The services of an officer or other employee of the Corporation unless otherwise specially agreed to, may be terminated by the Appointing Authority:-

(i) in the case of permanent officer or other employee, by giving three months' notice on either side, or in lieu thereof pay of the period of the notice falls short of three months.'

This Court held Bye-law 3.2 in so far as it confers upon the Corporation the power to terminate the services of permanent employee, to be arbitrary and violative of Article 14 of the Constitution.

12. In view of the settled proposition of law, any rule which gives absolute power to the employer, detrimental to the interests of an employee, is liable to be quashed being void ab initio and violative of Article 14 of the [Constitution of India](#). If the

State or any Authority is permitted to exercise such power in an arbitrary manner against an employee, then the service career of the employee concerned would be marred. If such a condition is made precedent, the sword of damocles will remain hanging on the head of the employee throughout his career and the authority concerned after taking best from him, can throw him out at any time in the guise of terms and conditions of appointment. The chair is the authority and the person occupying it with the myth power of the nib of his pen can always bring end to the service career of the employee, which the Court, under no circumstances, would allow the functionary irrespective of his status/to exercise such power in an arbitrary manner. In order to curb arbitrariness and unreasonableness and to further check it, the Court would not hesitate to quash any rule/regulation which is against equity, justice, fair-play and public interest.

13. For the forgoing Reasons, both the writ petitions are allowed and the impugned orders, Annexure P-5 in CWP No. 11504 of 1992 and P-4 in CWP No. 8541 of 1992 are quashed. Accordingly, the provision contained in paragraph 3 of the appointment letter (Annexure P1) is declared arbitrary and violative of Article 14 and Directive principles as contained in Article 39(a) and 41 of the [Constitution of India](#). The Respondent-Corporation is directed to take back the petitioners in service with immediate effect and they shall be entitled to all consequential benefits. If the respondent-Corporation chooses to take any disciplinary action against the petitioners, it can proceed only in accordance with procedure laid down in the Rules/Regulations of the Corporation and not otherwise. However, there will be no order as to costs.

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