IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Arindam Sinha

WP 15270 (W) of 2003

Dr. Subroto Roy
Vs.
The Union of India & Ors.

Petitioner : Dr. Subroto Roy

For respondent Institute : Mr. R.N Majumder, Adv.
Mr. Sourav Chakraborty, Adv.
Mr. Supratim Bhattcharjee, Adv.

Amicus Curiae : Mr. Soumya Majumder, Adv.

Heard on : Several dates.

Judgment on : 9th January, 2019.

Arindam Sinha, J.

This writ petition came to be finally heard. Petitioner appeared in person to present his case of challenge to letter dated 21st August, 2003 and consequently, prayers for relief. It is necessary, text of this letter be reproduced below:

> *"You were originally appointed by Vinod Gupta School of Management as Professor on contract basis for five years. The terms of the letter of appointment are contained in the letter dated 30th August, 1996, issued by Prof. Ashoke K. Dutta, the then Dean of the School. By an office order No. R/57/2001 dated 14th September, 2001 you were informed that the competent authority had agreed to extend the tenure of your appointment from 2nd September, 2001 to 1st September, 2006 on executing a fresh contract on a twenty rupees non-judicial stamp paper along with a signed copy thereof (draft*

contract form was enclosed). This office order was issued by Sri M.N. Gupta, Registrar. You did not execute the said contract on the basis of the draft sent to you, in spite of reminders. Yet you were allowed to continue as Professor and salary was released to you.

On the 15th July, 2003 the present Registrar Dr. D. Gunasekaran sent a memo to the present Dean of VGSOM asking him to arrange to send the Contract Agreement duly signed by Dr. Subroto Roy, to the Registrar within fifteen days from the date of receipt of the memo, as this was required for the Institute records, processing salary bills etc. I sent the copy of the office order to you along with the draft contract requesting you to sign the contract agreement as required earlier, within fifteen days from the date of receipt of my letter. The said letter was sent under registered post with acknowledgement due and through courier. The acknowledgement has been received by us from you.

However, you have still refused to sign the contract as stated. As you have failed and neglected to perform your part of the agreement wrongfully, the contract of appointment extending your time for five years is no longer binding on the Institute and the Institute terminates the contract.

Accordingly, with effect from the afternoon of 20th August, 2003, you are relieved from your duties as Professor. VGSOM. You are hereby directed to hand over to the Assistant Registrar, VGSOM all items, assets, properties of the School and the Institute which are with you, and the vacant possession of the bungalow no. A-3 which had been allotted to you."

Petitioner drew attention of Court to his offer of appointment letter dated 30th August, 1996. He demonstrated therefrom, inter alia, duration of the appointment was for period of five years and termination of service could be by either side on three months notice. He also referred to endorsement in the letter which is extracted below:

"Needless to say IIT has always had a strong tradition of academic freedom.

Sd/-."

According to him, this endorsement was assurance to him that he could, by way of academic freedom, pursue his research. He accepted the offer by his letter also dated 30th August, 1996. His specific submission, there was no formal agreement drawn up or executed at that time.

The five year period was due to expire on 1st September, 2001. Before that, on 30th November, 1999, then Director of Indian Institute of Technology, Kharagpur [IIT (KGP)] had remarked about him as follows:

"Dean F & P

I have read with interest and find the past experience to be impressive and interesting. I hope he will be able to make valuable contributions as a Professor of IIT Kgp also and I am looking forward to his future works."

This resulted in automatic extension of his contract by another five years on same terms and conditions, was his submission. The Institute then issued office order dated 14th September, 2001, in supersession of its earlier order dated 31st August, 2001 informing that competent authority had kindly agreed to extend tenure of his appointment or further period of five years from 2nd September, 2001 to 1st September, 2006 on execution of fresh contract, draft enclosed. No fresh contract was executed as he continued in contractual service on same terms and conditions as on appointment.

Petitioner, by his letter dated 14th May, 2003, had complained mismanagement and mis-utilization of funds, amounting to USD 19 lakhs, by the Institute. He drew attention to annexure-R-4 of affidavit-in-opposition, being letter dated 17th July 2003 of Dean addressed to Registrar and Secretary, Board of Governors. The letter contains remarks on allegations made by him by his said letter dated 14th May, 2003. Remarks appearing at the end of the letter are reproduced below:

"The letter in reference has assumed serious dimensions and has gone beyond all established norms of reputed institutions. Opinions expressed having no prima facie may be detrimental to the image of the institute in India as well as abroad. Furthermore, there are several interlinking issues, viz. validity of Prof. Subroto Roy's status as an employee, his continuation as Professor in the School, breach of rules of conduct as per Acts and Statutes, accepting gifts without permission from private individuals, etc. which will have grave implications to the reputation of the institute, if suitable measures are not taken without further delay. We, therefore, suggest a legal opinion be sought without any delay so as to proact any damage which may follow if such letters become public."

Petitioner submitted, it is these remarks which prompted issuance of impugned letter dated 20th August, 2003 by which his contract of service in the extended period was wrongfully terminated and he, relieved from his duties as Professor. At this juncture Court put query to the Institute as will appear in following extract from order dated 20th June, 2018.

"Paucity of time has intervened. It is noticed that the draft agreement enclosed in Office order dated 14th September, 2001 contains terms as varied from terms agreed earlier, mentioned above, between the Institute and petitioner. Institute will have to demonstrate re-negotiation of terms if it wishes to assert its case made out in impugned letter. The Institute having had continued with services of petitioner, thereafter on complain regarding utilization of funds, appears to have taken this action mid-way during extended period with or without legal opinion sought, is something this Court is troubled by. If petitioner was being a busy body, would that be within the scope of review of performance being an agreed term?"

Mr. R. N. Majumder learned advocate appeared on behalf of the Institute and submitted, there should be no interference. Reason for

termination by impugned order is that petitioner had refused to sign the contract and as such his extension of time was terminated. According to him, case made out by petitioner at hearing is not case made out in the writ petition. He relied upon judgment of Supreme Court in **Uptron India Limited vs. Shammi Bhan** reported in **AIR 1998 SC 1681**, to paragraph 9 which is reproduced below:

> *"9. The general principles of the Contract Act applicable to an agreement between two persons having capacity to contract, are also applicable to a contract of industrial employment, but the relationship so created is partly contractual, in the sense that the agreement of service may give rise to mutual obligations, for example, the obligation of the employer to pay wages and the corresponding obligation of the workman to render services, and partly non-contractual, as the States have already, by legislation, prescribed positive obligations for the employer towards his workmen, as for example, terms, conditions and obligations prescribed by the Payment of Wages Act, 1936; Industrial Employment (Standing Orders) Act, 1946; Minimum Wages Act, 1948; Payment of Bonus Act, 1965; Payment of Gratuity Act, 1972 etc."*

Court, requiring assistance, appointed Mr. Soumya Majumder, learned advocate as Amicus Curiae. Submissions made by Amicus Curiae were recorded in order dated 31st August, 2018 as are reproduced below:

> *"Mr. Majumder, Amicus Curiae relies on judgment of Supreme Court in* ***Roshan Lal vs UOI*** *reported in* ***AIR 1967 SC 1889****, to paragraphs 6 and 7. It would be sufficient to extract following passage from said judgment.*
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> > "It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are

no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee."

He submits, case of petitioner of contractual service under the institute cannot be brought within four corners of this declaration of law since the Institute's Establishing Act and Statutes govern the situation.

Appointment on contracts is provided for by Indian Institute of Technology, Kharagpur Statutes. Statute 17 says as follows:

"17. Appointment on Contracts

(1)Notwithstanding anything contained in these statutes, the Board may in special circumstances appoint an eminent person on contract for a period not exceeding 5 years, with a provision of renewal for further period, provided that every such appointment and terms thereof, shall be subject to the prior approval of the Visitor.

(2)Subject to the provisions contained in the Act, the Board may appoint any person on contract in the prescribed scales of pay and on terms and conditions applicable to the relevant post for a period not exceeding 5 years with a provision of renewal for further period. For making such appointments, the Chairman may, at his discretion, constitute such adhoc Selection Committees, as the circumstances of each case may require.

(3)Not withstanding anything contained in these Statutes, the Council may appoint an eminent person as Director on contract for a period not exceeding five years, with a provision for renewal for further periods provided that every such appointment and terms thereof shall be subject to the prior approval of the visitor."

Amicus Curiae submits further, this is a situation where Court might find there has been breach of contract. Remedy for the breach cannot be re-writing the contract since the contract stood expired by efflux of time. On request from Court regarding position in law on exercise of power to compensate in exercise of jurisdiction under article 226 of the Constitution of India made to Amicus Curiae, hearing is adjourned."

Submissions made by petitioner in substantiating challenge held out in his writ petition cannot be said to be not founded on pleadings in it, of fact. In any event, petitioner's submissions were recorded in order sheet and notice of any further case, thereby given to the Institute along with leave to file supplementary affidavit, which the Institute filed. The Institute could not answer query put by Court regarding existence of fact of re-negotition of the contract for it to run in extended period. There is no doubt that petitioner is an eminent person who was appointed as per provisions in Statute 17.

The Institute found petitioner to be an eminent person and appointed him on contract subject to his approval, him being the visitor. There having been no re-negotiation of terms of appointment for extension of contract, let alone approved by him being the visitor, impugned termination has no connection with agreed terms. From facts and circumstances aforesaid, it is clear the Institute or persons running it were uncomfortable with presence of petitioner and had him removed. The Institute then took possession of office and residence allotted to petitioner on 10th November, 2005. List of items which were recovered was made and the items shifted to Central Store of the Institute for safe custody.

Court appreciates submissions made by Amicus Curiae and finds there has been breach of contract but remedy cannot be re-writing of it since the contract stands expired by efflux of time. However, petitioner cannot thereby be rendered remediless since public law interference is mandated regarding breach of service condition by the Institute. There is no exception to such interference as in contractual service matters of an Institute such as IIT (KGP). **Uptron India Limited** (supra) has no application to case of petitioner.

Supreme Court in **Ruby Tour Services (P) Ltd. vs. Union of India** reported in **(2018) 9 SCC 537**, in paragraphs 33 to 36 said as follows:

> *"33. Now, we come to the question of relief, which is to be granted to the petitioner, in view of our above decision that rejection of claim of the petitioner for Haj 2018 was unfounded. The learned counsel for the petitioner has placed reliance on the judgment of this Court in Jeddah Travels & Jeddah Hajj Group v. Union of India, wherein this Court laid down the following in para 7:*
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> > "7. Having considered the contentions advanced on behalf of the rival parties, we are of the view that the petitioners who had approached the Court well in time cannot be denied the benefit of an adjudication as urged by the learned ASG. The time-frame still available, in our considered view, is adequate to enforce the rights of the petitioners if they are found so entitled."
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> *34. The learned counsel submits that since the petitioner has filed this petition on 4-6-2018, which was the date for allocation of Haj quota to the eligible PTOs, the petitioner is entitled for relief. Shri Santosh Krishnan submitted that even if the quota is allotted to all the PTOs, the number of passengers allotted to each PTO may be reduced by one, which may be re-allotted to the petitioner and another eligible person. This Court in United Air Travel Services v. Union of India decided on 7-5-2018 came to consider the question of relief to be granted to PTO, whose application for grant of registration*

for Haj Pilgrimage 2016 was rejected. In the present writ petition, one of the reliefs claimed by the petitioner is for grant of compensation. In Prayer (c), following has been prayed:

> "(c) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent to pay compensation to the petitioner for the loss occurred to it by not granting registration for Haj 2018;"

35. This Court in United Air Travel Services considered the question of grant of relief and has laid down the following in paras 13 to 18:

> "13. The question, however, arises what relief can be granted in such a situation. The passage of time has made certain reliefs infructuous. The time period for conducting Haj tours for 2016 as well as 2017 is over. Thus, even the alternative relief prayed for 2017 has become infructuous. In three of the writ petitions i.e. WPs (C) nos. 631 of 2016; 634 of 2016 & 636 of 2016, there is a specific alternative plea for compensation to the petitioners for the loss accrued due to non-grant of registration for the Haj of 2016. While there is no such specific plea in the other writ petitions, given the identical situation, we are of the view that the same principle ought to be applied in all these cases. The petitioners cannot be left remediless. The mindless action of the respondents in rejecting the eligibility of the petitioners for the year 2016 on the very grounds on which they were exempted necessitates that the petitioners should be entitled to damages in public law so that they are compensated, at least, to some extent for not having been able to carry on with their business on account of illegal action of the respondents.
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> 14. The principles of damages in public law have to, however, satisfy certain tests. In Nilabati Behera v. State of Orissa, it was observed that public law proceedings serve a different

purpose than private law proceedings. In that context, it was observed as under:

> *'34....The purpose of public law is not only to civilise public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making "monetary amends" under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.'*

It was also emphasised that it is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation in exercise of writ jurisdiction. The objective is to ensure that public bodies or officials do not act unlawfully. Since the issue is one of enforcement of public duties, the remedy would be available

under public law notwithstanding that damages are claimed in those proceedings.

15. The aforesaid aspect was, once again, emphasised in Common Cause v. Union of India. We may also usefully refer to N. Nagendra Rao & Co. v. State of A.P. qua the proposition that the determination of vicarious liability of the State being linked with the negligence of its officer is nothing new if they can be sued personally for which there is no dearth of authority.

16. In the facts of the present case, the arbitrariness and illegality of the action of the authority is writ large. The petitioners have been deprived of their right to secure the quota on a patently wrongful order passed for reasons, which did not apply to them and for conditions, which had been specifically exempted. What could be a greater arbitrariness and illegality? Where there is such patent arbitrariness and illegality, there is consequent violation of the principles enshrined under Article 14 of the Constitution of India. The facts of the present case are, thus, undoubtedly giving rise to the satisfaction of parameters as a fit case for grant of compensation.

17. On a conspectus of the aforesaid facts including the number of pilgrims for whom the petitioners would have been entitled to arrange the Haj pilgrimage, an amount of Rs.5 lakhs per petitioner would be adequate compensation for the loss suffered by them and subserve the ends of justice. We are conscious of the fact that there is no quantification based on actual loss, but then the award by us is in the nature of damages in public law.

18. The amount for each of the petitioners be remitted by the respondents within two months from the date of this order failing which the amount would carry interest @ 15 per cent

per annum apart from any other remedy available to the petitioners. It will be open to the respondents to recover the amount of damages and costs from the delinquent officers responsible for passing such unsustainable orders."

36. We are of the view that the petitioner is also entitled for same compensation of Rs.5 lakhs, which is adequate compensation for the loss suffered by the petitioner and shall subserve the ends of justice. We further direct that the aforesaid amount be paid within two months from this date, failing which the amount would carry simple interest @ 15 per cent per annum. Writ Petition (C) no.646 of 2018 is allowed to the above extent."

Compensation being in the nature of 'exemplary damages' awarded against the wrongdoer for breach of its public law duty, there is necessity for assessing what should be compensation directed to be paid to petitioner by the Institute. Court had required, for this purpose, petitioner to file supplementary affidavit, which he did. Court has only looked at contents in it, as would appear below, for assessment of compensation. Petitioner received last gross pay of Rs.34,720/- per pay slip dated 30th June, 2003. He was not paid 38 months salary in the extended period since it was terminated before expiry. He says, he proceeded on sabbatical leave to the UK between January and October, 2004. He again went there for three weeks in March-April, 2005. The visits were for research undertaken by petitioner, outcome of which was a book. He received Honorarium and Royalty. He also contributed articles and editorials to 'The Statesmen' and received Honorarium. He is indeed a person of eminence. So the Institute had appointed him under Statute 17.

Impugned letter dated 21st August, 2003 is set aside and quashed. Supreme Court has settled law regarding entitlement to back wages not being automatic on re-instatement. Re-instatement in this case is not possible but compensation, therefore, cannot automatically be directed for

payment of 38 months salary, being the contractual period in which petitioner's services stood terminated. Aggregate of such salaries is Rs.13,19,360/-, last of which was payable for month August, 2006. In the facts and circumstances compensation, at minimum, would be Rs.10,00,000/- factoring in progressive increased inflation happened between year 2006 and this day.

The Institute will, upon notice to petitioner, facilitate, on mutually convenient notified date, petitioner collecting his belongings as shifted to Central Store of the Institute. The Institute will also pay compensation of Rs.10,00,000/-to petitioner on that occasion. These directions are to be carried out by the Institute in favour of petitioner by 15th February, 2019. Court records its appreciation and gratitude to Amicus Curiae for assistance rendered.

The writ petition is disposed off as above.

(Arindam Sinha, J.)