

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 21629 of 2016****FOR APPROVAL AND SIGNATURE :****HONOURABLE MS JUSTICE SONIA GOKANI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

PATEL MANOJ PRAKASHBHAI....Petitioner(s)

Versus

GUJARAT NATIONAL LAW UNIVERSITY (GNLU)....Respondent(s)

Appearance :

MR KB PUJARA, ADVOCATE for the Petitioner(s) No. 1

MR DC DAVE, SENIOR COUNSEL WITH MR.UDAYAN P VYAS, ADVOCATE
for the Respondent(s) No. 1**CORAM HONOURABLE MS JUSTICE SONIA GOKANI**
:**Date : 17/04/2017**

CAV JUDGMENT

1. By way of present petition preferred under Articles 14, 16, 19, 21 and 226 of the Constitution of India, the petitioner has prayed for the following substantial reliefs :

"12(b) to quash and set aside the impugned action of the respondent in seeking to orally terminate the petitioner's employment on 31.12.2016 even though as per the letter of appointment dated 31.12.2013 at Annexure-D the petitioner has been given appointment as "Head Budget, Accounts & Finance/Assistant Finance Officer" in the pay-scale of Rs.15,600-39100 with grade pay of Rs.5400/- upto 31.12.2019;

(c) to hold and declare and direct that the petitioner is entitled to continue in the employment of the respondent as "Head Budget, Accounts & Finance/Assistant Finance Officer" in the pay-scale of Rs.15,600-39100 with grade pay of Rs.5400/- upto 31.12.2019 as per the letter of appointment dtd.31.12.2013 at Annexure-D, and even thereafter until he reaches the age of superannuation of 58 years;"

2. The factual score that is essential to be depicted is that pursuant to an advertisement issued by the respondent-Gujarat National Law University (hereinafter referred to as 'the University') for the post of "Head Budget, Accounts & Finance/Assistant Finance Officer" in the pay-scale of Rs.15600-39100 with grade pay of Rs.5400/- initially for a period of five years' duration depending upon the performance of the incumbent and the need of the University, the petitioner herein applied for the said post. He underwent the requisite process of selection and was duly selected for getting the appointment letter dated January 02, 2012.

2.1 This letter offered him the fixed term of appointment, subject to the Regulations of the University and the changes that may be made in the Regulations from time to time. This provided him the pay-scale of Rs.9300-34800 with grade pay of Rs.4600/-. It was mentioned that on successful completion of three years' period, his service may be placed in the pay-scale of Rs.15600-39100 with grade pay of

Rs.5400/-. His first year out of the five years was to be considered for probation. His appointment was to expire without prior notice on the expiration of the fixed period. Thus, depending upon the need of the University, the performance records of the petitioner and any other criteria fixed by the Executive Council of the University from time to time, his appointment was to be governed.

2.2 Since he joined duty on January 02, 2012, one year was to expire on January 02, 2013. On completion of probation period of one year, he received a letter dated January 24, 2013, of completion of probation, where the University confirmed five years' contract with effect from commencement of his service, subject to the terms and conditions as per his letter of appointment. He made a request to the respondent-authority to grant him the pay-scale originally advertised being the pay-scale of Rs.15600-39100 with grade pay of Rs.5400/- from January 01, 2013.

2.3 On December 31, 2013, a letter was issued to the petitioner by the respondent-University being the letter of appointment offering fixed term appointment where the effective date of appointment was January 01, 2014 and the expiry date was December 31, 2019. It also indicated that such appointment would be for a period of five years with one year probation and the appointment would expire without prior notice on expiration date. He accepted the letter of appointment on December 31, 2013.

2.4 Yet another letter dated December 31, 2013 was communicated to the petitioner in response to his earlier communication dated January 29, 2013, which was regarding change in his pay-scale by granting him the pay-scale of Rs.15600-39100 with grade pay of Rs.5400/- with effect from January 01, 2014 with one year probation. The rest of the terms and conditions remained the same as his earlier appointment letter dated January 02, 2012. It also clarified that the original date of joining of the petitioner on the position of the "Head

Budget, Accounts & Finance/ Assistant Finance Officer" i.e. January 02, 2012, would be utilised for the purpose of calculation of his service, accepting the financial benefits and in the event of any inconsistency between the terms of his appointment and Regulations of the University, the Regulations of the University shall prevail.

2.5 The grievance of the petitioner began on October 21, 2016, when he was called by the Director of the University intimating him that his contract was to be over on December 31, 2016 as per the letter dated January 02, 2012 and a reference of December 31, 2017, in the first letter was a typographical error. He was also communicated that the advertisement was to be shortly issued for the post of Section Officer(Accounts) in the pay-scale of Rs.9300-34800 with grade pay of Rs.4200/- and he may choose to apply and his salary will be based on the fitment formula, so that he would not have issue of financial loss. He was also given to understand that for ending his contract, a

notice was to be issued shortly. This came as a surprise to the petitioner. He raised an objection and conveyed that his contract was to be over on December 31, 2019 and not on December 31, 2016.

2.6 It is the say of the petitioner that eventually, the thought of issuance of end of contract notice, was also given up. The petitioner approached this Court as he apprehended termination of his service before December 31, 2019. He, however, has averred in the petition that on October 27, 2016, for the post of Section Officer (Accounts) in the pay-scale of Rs.9300-34800 with grade pay of Rs.4200/-, which is a post lower than the post held by the petitioner in the pay-scale of Rs.15600-39100 with grade pay of Rs.5400/-, an advertisement has been published by the University and he applied for the said post and appeared in the written test held on November 29, 2016 and he is the only person shortlisted for the interview and he appeared on November 30, 2016 for such interview.

2.7 He, however, has urged that this participation has nothing to do with the challenge to the alleged illegal inaction on the part of the University in ending his employment prior to completion of contractual period. In the aforesaid facts and circumstances, he has approached this Court apprehending his termination.

3. An affidavit-in-reply on behalf of the respondent-University has been filed by the Registrar, who does not dispute the factum of selection of the petitioner in the year 2012 on the post of "Head Budget, Accounts & Finance/Assistant Finance Officer". However, the version of the University is that the petition suffers from the vice of *suppressio veri* and *suggestio falsi* as the material facts have been suppressed by the petitioner. According to the respondent-University, pursuant to the first advertisement dated September 16, 2011, the petitioner was offered the post of "Head Budget, Accounts & Finance/Assistant Finance Officer" for

a fixed term of five years. Consequent upon his acceptance of the said offer, a letter of appointment was issued in his favour on January 02, 2012, which also mentioned that it was for a fixed term of five years on the said post with a condition that on his successful completion of three years, he may be placed in the pay-scale of Rs.15600-39100 with grade pay of Rs.5400/-. His first year since was for probation, it was clearly mentioned that this fixed term may be extended as per the Rules of the University, performance criteria as may be fixed by the Executive Council. The letter dated January 02, 2012, reflects the effective date of appointment and expiration date of appointment is indicated as December 31, 2017, instead of January 01, 2017. According to the respondent, from the stand point of administrative convenience of the respondent, December 31 in place of January 01, was to be mentioned in the said letter of appointment and in that case, it would be December 31, 2016 and instead a mistake crept in which is *"of a most trifling nature"*.

3.1 Upon completion of period of one year of probation, when the respondent-University issued the letter of appointment on January 24, 2013, the petitioner made a representation on January 29, 2013, seeking to grant him the pay-scale of Rs.15600-39100 with grade pay of Rs.5400/- with effect from January 01, 2013 and due to his persistence requests, he was granted the said pay-scale in the very second year. The letter dated December 31, 2013, was issued informing about acceptance of his request, with effect from January 01, 2014 with one year probation and with other terms and conditions as stipulated in the letter dated January 02, 2012. It is further his say that the issuance of fresh letter of appointment was unwarranted. The respondent also committed mistake by issuing another letter dated December 31, 2013, which erroneously mentioned the effective date of appointment as January 01, 2014 and expiration date to be December 31, 2019.

3.2 It has been emphasised in the affidavit-in-reply that the term of the appointment was five years with one year probation, which was very much a part of the initial advertisement and it was mentioned that in the event of any inconsistency or conflict between the terms of appointment and the regulations of the respondent-University, the regulations of the respondent-University shall prevail. It is further urged as under :

"9. . . . Assuming without admitting that another Letter of Appointment dated 31st December, 2013 was required to be issued to the Petitioner and accordingly it was issued, the concerned administration of the Respondent University committed the same error of calculating Expiration Date of Appointment at 31st December, 2019 by adding fixed term of 5 years in the year 2014 as was committed in the previous Letter of Appointment dated 2nd January, 2012 by ignoring the fact that the date of Appointment of the Petitioner being stated as 1st January, 2014, the whole of the year 2014 together with year 2015, year 2016, year 2017 and year 2018 would end the term of the Petitioner for 5 years on 31st

December, 2018 and not on 31st December, 2019. However, even these mistakes have also gone unnoticed from the attention of the Respondent."

3.3 It is further urged that this letter of appointment dated December 31, 2013, shall neither be considered as extending a further period of five years nor shall be appointing the petitioner afresh for a fixed term of five years from January 01, 2014. Unless and until the original term of five years comes to an end or expires, there would not be any question of second letter of appointment. Rather than the contents, the form of letter of appointment has been emphasised. It is also urged that the second letter of appointment dated December 31, 2013, would not give rise to the right of the petitioner to continue till December 31, 2019.

3.4 It is also further contended that he when participated in the recruitment process for the post of Section Officer (Accounts) pursuant to the Advertisement bearing No.1/2015 in the set up of Swarnim Gujarat Sports University,

Gandhinagar, he has not referred to the letter of appointment dated December 31, 2013, as such an application was forwarded through the Registrar of the respondent-University. It is further his say that the Director of the respondent when was reviewing the appointment of the employees in the set up of the respondent-University on contractual basis, it was realised that the expiry date of appointment was December 31, 2016 and it was wrongly typed as December 31, 2017. The petitioner was also intimated of such mistake by the Director himself in presence of the Registrar and others, which was the reason as to why he participated in the process of recruitment for the post of Section Officer (Accounts) in non-teaching category. In the column of experience, he has mentioned experience of "4 years, 10 months and 14 days".

3.5 It is further contended that the appointment letter dated January 02, 2012, states that the appointment shall expire without prior notice on expiration date. There was no assurance to

convert contractual appointment into permanent appointment. The issue of conversion of contractual appointment into permanent appointment was considered by the Executive Council and the General Council.

3.6 In the 9th General Council Meeting held on January 19, 2013, the Committee was to be constituted to examine the issue of conversion of contractual appointment into permanent appointment and place the recommendations before the next General Council Meeting *inter alia* on the basis of policy of conversion of contractual appointments into permanent appointments approved by the Executive Council.

A Permanent Appointment Committee was constituted to look into the issue and the recommendations were placed in the 13th Meeting of the General Council held on February 14, 2015, wherein it was resolved that the Committee entrusted to examine the issue of conversion shall also frame the guidelines to the effect that teaching and non-teaching staff appointed against permanent posts are subjected

to annual performance review and in case such staff fail to meet the expected performance standard of the University, the services of such staff member shall be terminated from the permanent appointment. The guidelines were framed to ensure the same.

3.7 This Permanent Appointment Committee also added two members and it also recommended to the General Council to ratify the recommendations and amendments in its 5th Meeting dated March 10, 2015. It has been decided that the University shall conduct recruitment against the permanent post through fresh advertisement and in conformity with the regulations and norms prescribed by the University Grants Commission and the Government of Gujarat respectively. Such appointment shall be approved by the Executive Council. The staff serving on 5 years' contract shall continue to serve and at the end of 5 years, their services shall end. They shall not have any right of extension or renewal of the contract. The said Minutes of the 5th Meeting of the Permanent

Appointment Committee was to be adopted and given effect to in the form of circular resolution to be passed in the General Council.

3.8 The Director of the respondent forwarded the circular resolution to the Visitor and Members of the General Council for approval on March 19, 2015, however, it was expressed that such resolutions cannot be passed by way of circulation and eventually, it was put up for discussion in the form of agenda in the 14th Meeting of the General Council held on February 27, 2016, wherein such a report was approved as a whole.

3.9 It is further contended that a detailed representation had been made by the teaching and non-teaching staff members to the Members of the General Council requesting the respondent-University to regularise their service. The petitioner is one of the signatories of such representation made on March 27, 2016. His participation in the subsequent process of selection of Section

Officer (Accounts) is also vindicating the fact that he is aware of his appointment coming to end on December 31, 2016.

4. A rejoinder affidavit has also been filed by the petitioner urging therein that this fixed term of appointment since was to be extended depending upon the needs of the respondent-University, the performance of the petitioner and on any other criteria, there is no reason warranting termination of the contract of the petitioner. Reliance is placed on the decision of the Apex Court rendered in the case of **Kumari Shrilekha Vidyarthi, etc. v. State of U.P. and others**, reported in AIR 1991 SC 537, as also the decision of the Constitutional Bench of the Apex Court in the case of **Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others**, reported in AIR 1991 SC 101. It is urged that the action of ending the term of the petitioner is grossly arbitrary action which deserves interference at the hands of this Court.

5. This Court has heard extensively the learned counsel appearing for both the sides. They have consented for deciding the matter finally at an admission stage.

6. Shri K.B. Pujara, learned counsel appearing for the petitioner, urged that the action on the part of the respondent-University is arbitrary and illegal. According to him, even if the breach of contract entitles a person to get the damages by way of civil action, the respondent-University which is functioning as the 'State' under Article 12 of the Constitution of India, deserves to introspect and watch its conduct. It cannot act arbitrarily and in violation of the terms of the contract. When the initial appointment itself had permitted extension as per the need and performance, and so also on any other criteria that may be set out by the Committee, nothing had happened to end the contract. Without any rhyme or reason, such a harsh step is taken. He relied upon the decisions as mentioned in the rejoinder affidavit.

7. Shri D.C. Dave, learned Senior Counsel appearing with the learned counsel Shri Udyan Vyas for the respondent-University, has urged that what is far more important in such matters is the intent of the parties. From the beginning in the advertisement, the term of five years was fixed and thereafter also, periodically it has been made very clear as to what the respondent-University had desired was the fixed term of five years. Inadvertently in both the letters as explained in the affidavit-in-reply in detail, a typographical error had emerged and the petitioner all along knew about such error. Not only he made an application for participating in the recruitment process, but also referred to his term coming to an end in December, 2016 and also participated in the fresh process.

7.1 It is urged by the learned Senior Counsel that in the case of teaching and non-teaching staff, the contractual appointment was not to be converted into the permanent appointment and, hence, any employee is pained or aggrieved by the action of the employer is free to choose

to take recourse available under the law. In the matter of contractual appointment, this Court may not interfere and may not exercise extraordinary jurisdiction. He relied upon the following authorities in support of his version :

- (i) ***Banchhanidhi Rath v. The State of Orissa and others***, reported in AIR 1972 SC 843.
- (ii) ***Executive Committee of Vaish Degree College, Shamli and others v. Lakshmi Narain and others***, reported in (1976) 2 SCC 58.
- (iii) ***Pearlite Liners (P) Ltd. v. Manorama Sirsi***, reported in (2004) 3 SCC 172.
- (iv) ***Official Liquidator v. Dayanand and others***, reported in (2008) 10 SCC 1.
- (v) ***Gridco Ltd. and another v. Sadananda Doloi and others***, reported in AIR 2012 SC 729.

8. The question that arises for consideration before this Court is as to whether the contractual

appointment on the post of *"Head Budget, Accounts & Finance/Assistant Finance Officer"* meant initially for a period of five years and thereafter, by a fresh appointment made it upto December 31, 2019, if is being terminated by the act of the respondent-University, would such act deserve interference by invoking writ jurisdiction of this Court ?

9. As detailed hereinbefore, the advertisement issued for the post of *"Head Budget, Accounts & Finance/Assistant Finance Officer"* had prescribed initially period of five years for contractual appointment on such a post. Its subsequent extension depended upon the performance of the incumbent and need of the respondent-University. The respondent-University also retained the discretion not to make any appointment to this post, to make an appointment at a lower pay-scale or on consolidated pay, or to make an appointment with modified job description. The pay-scale for the said post prescribed was Rs.15600-39100 with grade pay of Rs.5400/-.

10. On January 02, 2012, the letter of appointment on a fixed term was given to the petitioner, subject to the provision of the Gujarat National Law University Regulations in the pay-scale of Rs.9300-34800 with grade pay of Rs.4600/-. It also made it clear that after successful completion of service of three years, he may be given pay-scale of Rs.15600-39100 with grade pay of Rs.5400/-. The effective date of appointment mentioned is of January 02, 2012 and the expiration date is December 31, 2017.

11. Clause 3 under the heading of "Type of Appointment" mentions as under :

"3. Type of Appointment

a. This fixed-term appointment will be for the five year out of which the first year would be considered as probation. This appointment shall expire without prior notice on the expiration date indicated in paragraph 2. This fixed-term appointment may be extended, depending upon the needs of the University, your performance records and any

other criteria as may be fixed by the Executive Council of the University from time to time.

b. You shall give a 60 days notice in writing to the Registrar to effect your resignation. You shall not leave the university during the ongoing semester/projects.

c. You shall not engage yourself in any other paid services either fulltime or part time, during the continuance of your services."

12. The petitioner accepted the said appointment as prescribed in the letter dated January 02, 2012.

13. On January 24, 2013, the respondent-Registrar addressed a communication to the petitioner that his employment to the respondent-University is confirmed for a period of five years with effect from commencement of his service, on completion of the period of probation, subject to the terms and conditions as per his letter of appointment.

14. A fresh letter of December 31, 2013 was issued to the petitioner, which speaks of his effective date of appointment as January 01, 2014 and expiration date as December 31, 2019. Clause 6 of the said communication dated December 31, 2013, reads as under :

"6. Special Conditions/Entitlements

Your original date of joining on the position of Head, Budget, Accounts & Finance Officer/Assistant Finance Officer, i.e. 02 January 2012 will be utilised for the purposes of calculation of your services except financial benefits. In case of inconsistency or conflict between the terms of this appointment and the GNLU regulations, the latter shall prevail."

15. Yet another communication dated December 31, 2013, provides that his pay-scale would be Rs.15600-39100 with grade pay of Rs.5400/- with effect from January 01, 2014, with one year probation. The other terms and conditions are the same which are provided in his appointment letter dated January 02, 2012. This also ingeminates

that his original date of joining on the said post will be utilised for the purpose of calculation of his service except financial benefits and in the event of any conflict or inconsistency, the Regulations would prevail over the same.

16. Regulation 17 of section III of the Gujarat National Law University Administrative and Staff Regulations (hereinafter referred to as 'the Regulations') provides for mode of appointment to administrative or ministerial posts, which also provides for initial appointment for all administrative and ministerial staff for duration of five years with one year probation period. Subsequent extension of the contract is to be made on the basis of needs of the University, performance standards and any other criteria as may be fixed by the Executive Council, from time to time. The contract extension may be granted for a period of five years or three years, as determined by the Contract Extension Committee.

It also provides that the Contract Extension Committee shall be composed of the Director, Registrar, Head of Academic Affairs and two members of the Executive Council as nominated by the Executive Council.

Regulation 17(7) of the Regulations provides that administrative and ministerial staff members appointed prior to the adoption of these regulations shall continue to remain in their current posts and receive existing benefits until the expiry of their term. However, any renewal of their contract shall be subject to their fulfilling the qualifications as prescribed by the Government of Gujarat.

Regulation 17(9) of the Regulations provides for appointment, where the power of appointment of staff rests with the Director upon approval by the Executive Council. Each staff member shall receive a letter of appointment and signed by the Registrar or by an official in the name of the Registrar. It should contain

expressly or by reference all the terms and conditions of employment.

The effective date of appointment is provided in Regulation 17(10), which enumerates that the appointment of every staff member shall take effect from the date on which the staff member starts to perform his or her duties.

Regulation 17(12) provides for three types of appointments, viz. (i) short-term appointment (ii) fixed-term appointment and (iii) permanent appointment.

Short-term appointment is where the total period of service is expected to be less than one year. It does not carry any expectation of renewal of appointment or of conversion to any other type of appointment.

Fixed-term appointment has expiration date specified in the letter of appointment which may be for a term of five years.

The subject of permanent appointment at the time of enacting these Regulations was

suspended till the time as resolved by the General Council on February 27, 2016, not to convert any fixed term appointment into permanent appointment from amongst those who were working on fixed terms.

17. The Resolution of the Executive Council was put up for discussion in the 14th Meeting of the General Council on February 27, 2016 and it resolved to accept the recommendations of the Permanent Appointment Committee, which had provided to fill in the approved posts for non-teaching staff members through fresh advertisement. Those who were appointed on five years' basis would have no right to get extension or renewal on completion of five years' period.

It, thus, makes it clear that the policy decision is taken by the General Council not to renew the fixed term contract and to fill in those posts of teaching and non-teaching staff members by fresh advertisement. It does not speak of curtailing period of existing contract. Corollary to this is the question whether the

contract with the petitioner has not already ended on December 31, 2016, or at the best, by January 01, 2017, since the same had begun on fixed term on January 02, 2012.

18. As is also quite clear from the first letter that in the event of any conflict in the letter of appointment and in the Regulations, the Regulations would have precedence over the letter of appointment. The Regulations also provide that such appointment shall be for a period of five years and with one year probation period. Reading the same with Regulation 17(12)(b), which defines fixed-term appointment, it is enumerated therein that the letter of appointment should be granted for a fixed period of five years and, therefore, the initial appointment would end on January 01, 2017. Reference at this stage is a must of the second letter of appointment issued on December 31, 2013. Coupled with this, there is the necessity to read Regulation 17(6) of the said Regulations, which says that subsequent extension of the contract shall be made on the basis of needs of the University, performance standards

and any other criteria as may be fixed by the Executive Council. Such extension could be granted for a period of five years or three years, as may be determined by the Contract Extension Committee. The constitution of the Contract Extension Committee is also provided which consists of the Director, Registrar, Head of Academic Affairs and two members of the Executive Council as nominated by the Executive Council.

19. It is unequivocally emerging from record that the initial appointment which was meant for five years provided expiration of the date of appointment as December 31, 2017 instead of January 02, 2017. The authority may choose to execute one year period of probation, however, the said Regulation provides that out of the fixed term of five years, the first year should be considered for probation.

20. Assuming that this was a mistake on the part of the respondent-University in mentioning the

year as December 31, 2017, they ought to have mentioned as December 31, 2016 in the appointment order, however, the matter does not rest here. On his completion of period of probation on January 02, 2013, the correspondence which has been made was of January 24, 2013. He also made a request on January 31, 2013 and thereafter, for putting him in the pay-scale of Rs.15600-39100 with grade pay of Rs.5400/-. Although the respondent says that there was no requirement of fresh letter of appointment of December 31, 2013, the fact remains that such a letter was issued and a parallel letter of the selfsame date had also been communicated to the petitioner that he had been placed in the pay-scale prescribed in the advertisement. Both the letters provide for fixed period of appointment of five years with one year probation.

21. Going by the words "*period of appointment*", it provides for five years with one year probation. This can also mean six years in all. However, making a conjoint reading of this letter

with the Regulations, the fixed term appointment since provides for five years, the period of probation would need to be included therein and total period cannot be considered more than five years. Assuming that, therefore, the reference of December 31, 2019, is a mistake as indicated in the affidavit-in-reply and the respondent-University meant it for December 31, 2018, then also, it is limpid from the chronology of events that expiration date of appointment as per the last letter of appointment dated December 31, 2013, is undoubtedly December 31, 2018. It could be either January 01, 2019 or December 31, 2018, but in no case, the same can be read or construed as December 31, 2016, as sought to be pleaded by the respondent-University.

(emphasis supplied)

22. As is quite apparent from the Regulations, the Executive Council, on receipt of panel of names of persons recommended by the Selection Committee, appoint such persons, as it may deem fit, to the advertised administrative or ministerial post. It has been so done and after

completion of probation of one year, considering the need of the respondent and the performance standards and other criteria that may have been fixed by the Executive Council, the extension has been granted for further period of five years. This is also in consonance with the Contract Extension Committee. The Committee consists of the Director, Registrar, Head of Academic Affairs and two members of the Executive Council as nominated by the Executive Council. Therefore, to give a lame excuse that the subsequent letter of appointment was uncalled for or was unnecessary and that the petitioner was aware of the fact that the period of contract was to end on December 31, 2016, is nothing but an afterthought and also a defence, which is devoid of any *bona fide*. It can be termed as a conscious decision as after considering the need and requirement of the University, so also on fully appreciating working of the petitioner for nearly two years, not only the fresh appointment was given on December 31, 2013, but the petitioner was also provided the pay-scale which was advertised in the

advertisement dated September 15, 2011. A further term was also added that his original date of joining on the said post would be utilised for the purpose of calculation of his services except for financial benefits. Surely this sequence of event leading to grant of extension cannot be said by any stretch of imagination a mistake of "a most trifling nature" as contended by the respondent-University. Nor can this lead to the conclusion that the date of expiration of contract of five years is either December 31, 2016 or December 31, 2017.

23. The respondent-University is the 'State' under Article 12 of the Constitution of India and is expected not only to be fair in its contract but fairer while dealing with its employees i.e. teaching and non-teaching staff members. Having once issued a fresh letter of appointment consciously and thereafter also, granting the petitioner pay-scale which was otherwise meant after successful completion of three years, to say that it was his persistent insistence to

grant such pay-scale had led the University to grant it, is also not a fathomable approach. Again, had there been a mistake of giving a fresh appointment on December 31, 2013, there would not have been a reference in the subsequent letter of granting pay-scale of his original date of joining i.e. January 02, 2012, ensuring to consider his original date of joining for the purpose of other benefits, excluding the financial benefits.

24. It is a matter of record that the requirement of conversion of contractual employment into permanent employment was a major issue, which was going on between the Executive Council and the General Council. Eventually, the Committee appointed when opined for issuance of advertisement, the General Council accepted such report on January 21, 2016 and, therefore, the averment on the part of the petitioner that he is entitled to permanency on the post on which he was serving, is not accepted.

This Court in Special Civil Application No.6296 of 2016, having regard to the very issue raised by the teaching member of the very University has dealt with the same and, therefore, the issue does not require further elaboration.

25. It is an admitted position that the petitioner had participated in the process of filling up of the post of Section Officer (Accounts) advertised in the month of October, 2016 and he had also cleared the written test. His oral interview was scheduled on November 30, 2016, the outcome of which has not been made available.

26. Be that as it may, it is not the very post, but the pay-scale is also the lower than the pay-scale prescribed for the post of the petitioner and again, the person who is in contractual service is always entitled to participate in the advertisement for any permanent post that may be issued by the respondent-University, if otherwise

the Regulations so permit. Such participation by itself cannot be determinative of his knowledge or his understanding of this contract ending on December 31, 2016. With nothing being adverse against the petitioner and not a whisper about his negative or substandard performance, in the pleadings also, and with a specific inclusion of powers with the authority to extend the contractual appointment on the basis of the need of the University and recommendation of the Executive Council, the petitioner has been given extension upto December 31, 2019. In the opinion of this Court, therefore, terminating his service without any rhyme or reason, on the ground of his contractual term ending on December 31, 2016, is an act which by no standard, can be sustained.

27. At this stage, Regulation 25 that provides for "termination" requires reference. Regulation 25(1) provides that the appointing authority may terminate the service of an employee at any time prior to the expiry of the term of contract and by giving him a notice of fifteen days in case of his appointment during probation period, if (a)

the exigencies of service require abolition of the post of reduction of staff; (b) the employee does not meet the highest standards of academic and/or professional competence, integrity and efficiency required by the University; (c) the employee for reason of health, is incapacitated for further retention in service; (d) such facts anterior to the appointment of an employee and relevant to his suitability have come to the knowledge which would have, precluded him from appointment at the time of appointment.

28. None of the above grounds as provided in Regulation 25 exists to take such action. A new permanent post, of course, is contemplated in the set up of the University, but that would not contemplate terminating his contract at a premature stage. No notice of termination has been issued to the petitioner. Of course, his apprehension is not misplaced as the affidavit-in-reply is with the fullest force vindicate such stand of the respondent.

29. At this stage, the reference is needed to be made to the decisions sought to be relied upon by the learned Senior Counsel Shri D.C. Dave appearing for the respondent-University. In the case of **Executive Committee of Vaish Degree College, Shamli and others v. Lakshmi Narain and others**, reported in (1976) 2 SCC 58, the Apex Court has held that a contract of personal service cannot ordinarily be specifically enforced and the Courts normally would not give a declaration that the contract subsists and the employee, even after having been removed from service, can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions : (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

30. In the case of **Official Liquidator v. Dayanand and others**, reported in (2008) 10 SCC 1, the Apex Court while considering the power of judicial review in the case of public employment has held that although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying down the qualification, etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. It further held that the power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by *mala fides*.

At this stage, it would be apt to reiterate the relevant findings and observations of the Apex Court in the said decision, which read as under :

"59. The creation and abolition of posts, formation and structuring/ restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and lay down the qualification etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides."

31. In the decision of the Apex Court in the case of **Bhagwandas Governdandas Kedia v. M/s.Girdharlal Parshottamdas and Co. and others**, reported in AIR 1966 SC 543, the Court held that a contract unlike a tort, is not unilateral. If

there be no "meeting of minds", no contract may result. There should, therefore, be an offer by one party express or implied, and acceptance of that offer by the other in the same sense in which it was made by the other. But the agreement does not from a mere state of mind : intent to accept an offer does not give rise to a contract. There must be intent to accept and some external manifestation of that intent by speech, writing or other act, and acceptance must be communicated to the offeror.

It would be apt to regurgitate the relevant observations of the Apex Court in the said decision, which read as under :

"6. The principal contention raised by the defendants raises a problem of some complexity which must be approached in the light of the relevant principles of the common law and statutory provisions contained in the [Contract Act](#). A contract unlike a tort is not unilateral. If there be no "meeting of minds" no contract may result. There should therefore be an offer by one party, express or implied, and acceptance of that offer by the other in the

same sense in which it was made by the other. But an agreement does not result from a mere state of mind : intent to accept an offer or even a mental resolve to accept an offer does not give rise to a contract. There must be intent to accept and some external manifestation of that intent by speech, writing or other act, and acceptance must be--communicated to the offeror, unless he has waived such intimation, or the course of negotiations implies an agreement to the contrary."

32. In the decision of the Apex Court in the case of **Banchhanidhi Rath v. The State of Orissa and others**, reported in AIR 1972 SC 843, the Court held that the contract of employment cannot be enforced in an application under Article 226 of the Constitution of India. There is no right to remain in service. If such a right is claimed in terms of a contract or out of a custom, it cannot be enforced in a writ application. In the matter before the Apex Court, the Government under its uniform policy retired a teacher of an aided school under its control, on attaining the age of 58 years, the Apex Court held that the

order cannot be interfered with in writ application.

33. In the decision of the Apex Court in the case of **Pearlite Liners (P) Ltd. v. Manorama Sirsi**, reported in (2004) 3 SCC 172, the Court held that the contract of personal service cannot be enforced and a Court will not give a declaration that the contract subsists and the employee continues to be in service against the will and consent of the employer. It also ingeminated what had been held by the Apex Court in the case of **Laxmi Narain (supra)**.

34. The decisions of the Apex Court in the case of **Shrilekha Vidyarthi (supra)** and in the case of **Gridco Ltd. (supra)** have been relied upon by both the sides.

35. In the decision of the Apex Court in the case of **Gridco Ltd. and another v. Sadananda Doloi and others**, reported in AIR 2012 SC 729, while considering the appointment on contractual basis, the Court held that the scope of review is

not all pervasive. It does not extend to Court substituting its own view for that taken by the decision-making authority.

Relevant findings and observations of the Apex Court in the said decision would be profitable to be reproduced as under:

"26. A conspectus of the pronouncements of this court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ Court is

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

36. In the case of ***Shrilekha Vidyarthi (supra)***, the State Government had by a circular terminated the engagement of all the Government counsel engaged throughout the State and sought to defend the same on the ground that such appointments being contractual in nature were terminable at the will of the Government. The question of reviewability of administrative action in the

realm of contract was in that backdrop examined by the Court. The Court also examined whether the personality of the State Government underwent a change after the initial appointment of the Government counsel so as to render its action immune from judicial scrutiny and answered the same in negation. The Court held that even after the initial appointment had been made and even when the matter is in the realm of contract, the State could not cast off its personality and exercise a power unfettered by the requirements of Article 14 of the Constitution of India or claim to be governed only by private law principles applicable to private individuals.

On the said issue, the Apex Court in the said decision held and observed thus :

"... .. we are also clearly of the view that this power is available even without that element on the premise that after the initial appointment, the matter is purely contractual. Applicability of [Article 14](#) to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making

of a contract in exercise of the executive power being beyond dispute, can it be said that the State can thereafter cast off its personality and exercise unbridled power unfettered by the requirements of [Article 14](#) in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more? We have no hesitation in saying that the personality of the State, requiring regulation of its conduct in all spheres by requirements of [Article 14](#), does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of [Article 14](#) and contractual obligations are alien concepts, which cannot co-exist."

37. Recognising the difference between public and private law activities of the State, the Court reasoned out that unlike private individuals, the State while exercising its powers and discharging its functions, acts for public good and in public interest. Every act of the State has an impact on the public interest,

which would in turn bring in the minimal requirements of public law obligations in the discharge of such functions, to that extent the action of the State challenged on the ground of being arbitrary, unfair and unreasonable, and so held it offensive under Article 14 of the Constitution. It further held that the dispute fell within the domain of contractual obligations did not relieve the State of its obligation to comply with the basic requirement of Article 14 of the Constitution.

It would be appropriate to reproduce the relevant findings and observations of the decision of the Apex Court in the case of **Shrilekha Vidyarthi (supra)**, which read as under:

"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 non-arbitrariness at the hands of the State in any of its actions."

38. In the case of **Gridco Ltd. (supra)**, the appointment order was made by the Government Company clearly describing appointment as tenure appointment. The order also made it abundantly clear that the employment was terminable even during currency of tenure on three months' notice or on payment of three months' salary in lieu

thereof. Moreover, the service regulations of the company also stipulated that appointments to executive grades shall only be on contractual basis. The Apex Court held that with the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. The Court, of course, cannot act as an appellate authority. The Court also cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to in the said decision and

so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.

In the matter before the Apex Court, the respondent was appointed by the Corporation on contractual basis on a senior executive post. The tenure of contract was fixed. Renewal of contract of employment depended upon perception of management as to usefulness of respondent and need for an incumbent in position held by him. The respondent was in service of another employer before he chose to accept a contractual employment offered to him by Corporation which was limited in tenure and terminable by three months' notice on either side. The Court found no element of any unfair treatment or unequal bargaining power and held that there was no requirement of any over-sympathetic or protective approach towards him. In absence of any material to show whether there is any unreasonableness, unfairness, perversity or irrationality in the action taken by the Corporation. The order

setting aside termination was, therefore, held to be improper. The Court held that in the modern commercial world, executives are engaged on account of their expertise in a particular field and those who are so employed are free to leave or be asked to leave by the employer. Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise.

39. From above referred pronouncements of the Apex Court and the development of law over the past few decades, coupled with the discussion on factual aspects, this Court has no hesitation to hold that there is sufficient material to hold that the action on the part of the respondent-authority is unfair and unreasonable. With the development of law, the power of writ Court to examine termination order is beyond any doubt exists and any order terminating the service of an employee by a public authority, even if falls within the realm of contract, is open to the judicial review.

40. Without sitting in the armchair of the administrative authority, it can be said that the challenge in the present petition is made on the ground of violation of Articles 14, 16 and 19 of the Constitution of India, rightly claiming that the impugned act of the respondent-authority of terminating the service is unreasonable and unfair. Applying Article 14 to the action of the respondent-University, though the action can be said to be in the realm of contract, as held by the Apex Court in the case of **Shrilekha Vidyarthi (supra)**, the Authority which is also included under Article 12 of the Constitution, cannot have unbridled powers. It cannot claim to be governed only by a private law applicable to private individuals, whose rights flow only from the terms of the contract, without anything more.

41. Here in the present case, even if the respondent-University claims to be governed by the terms of the contract, then also any termination without any material for ending the service of an employee, prior to January 01,

2019, can be held to be an act, which surely warrants indulgence being violative of Article 14 of the Constitution of India. It is undoubtedly the discretion of the concerned authority either to appoint a person or to grant extension. If the terms indicated in the letter of appointment are to govern the contractual appointment, then also the Regulations provide for completing the contractual appointment for the period for which it had been granted. In the decisions taken by the Executive Council Committee and thereafter, by the General Council also, the appointments were to be made on the permanent post created in the set up by direct recruitment, however, it does not contemplate anything for ending the term of any of the employees before the expiration of actual term, particularly when there is complete absence of any ground as contemplated in Regulation 25.

42. It is not out of place to mention at this stage that neither any notice has been given to the petitioner nor has any rectification order

been issued to the petitioner in the post December 31, 2016 period. It was only in October, 2016, he came to be intimated, that too orally, that his term was to end on December 31, 2016 and not on January, 2019, as discussed hereinbefore. Such an action of the respondent-University cannot be endorsed by any standard and in fact, deserves to be strongly disapproved, terming the same as arbitrary and unreasonable in absence of any reason much less valid and cogent grounds for such termination and resultantly, the petition deserves to be allowed.

43. For the foregoing reasons, the present petition succeeds and the same is, accordingly, allowed. The petitioner is held entitled to be continued in appointment as per the letter of appointment dated December 31, 2013, however, only upto January 01, 2019, on his completing five years' fixed term appointment as per the Regulations, in the pay-scale of Rs.15600-39100 with grade pay of Rs.5400/-.

Disposed of accordingly. There shall be,
however, no order as to costs.

Direct Service is permitted.

(MS SONIA GOKANI, J.)

Aakar

