



2026:CGHC:24161

**NAFR****HIGH COURT OF CHHATTISGARH AT BILASPUR**Reserved for Judgment on : 04.05.2026Judgment Delivered on : 16.06.2026Judgment Uploaded on : 16.06.2026**WPS No. 5727 of 2024**

Jyotirmaya Pradhan S/o Narendra Kumar Pradhan Aged About 50 Years Posted As System Administrator-Cum-Infra-Consultant, R/o Quarter No. 200, Block No. 9, Housing Board Colony Khamhardeeh, Police Station- Khamhardeeh, District Raipur, Chhattisgarh.

**... Petitioner****versus**

**1** - State Of Chhattisgarh Through Secretary, Department Of Electronics And Information Technology, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh.

**2** - Secretary State Of Chhattisgarh, Mineral Resources Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh.

**3** - Chhattisgarh Infotech Promotion Society Through Chief Executive Officer, Office At State Data Centre, Building, Civil Line, Raipur, District Raipur, Chhattisgarh.

**... Respondents**


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For Petitioner : Mr. Himanshu Pandey, Advocate

For Respondent No.1 & 2 : Mr. R.K. Kesharwani assisted by Ms. Shrijita Kesharwani, Advocate

For Respondent No.3 : Mrs. Apoorva Nigam, Panel Lawyer

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**SINGLE BENCH: Hon'ble Shri Justice Parth Prateem Sahu****CAV Order**

1. Petitioner has filed this writ petition challenging the order/notice of termination of his service dated 28.08.2024 (Annexure P-1) with effect from 30<sup>th</sup> August, 2024 on the grounds as mentioned in this writ petition.
2. Facts relevant for disposal of this writ petition is that the respondent no. 3 had issued a notice no. 7/2020(1) for appointment on the post of Operational Manager System-cum-Infra Consultant/Program Manager, GIS Expert, Data Analyst and Subject Matter Expert by respondent no. 3 for Khanij Online 2.0 Project. After completion of the proceeding as applicable to it, 04 posts have been filled up out of 06 vacancies (except the Data Analyst and Subject Matter Expert). Petitioner was appointed as System Administrator-cum-Infra Consultant vide order dated 23.06.2021 (Annexure P-2). The order of appointment of the petitioner mentions that he was appointed on contractual basis for a period of five years from the date of joining or till completion of Khanij Online 2.0 Project whichever is earlier. Petitioner joined the post, however, he was served with a notice of termination dated 28.08.2024 (Annexure P-1) which is made effective from 30<sup>th</sup> of August, 2024. It is this order which is under challenge in this writ petition.
3. Learned counsel for petitioner submits that the order/notice of terminating the service of petitioner is arbitrary and is in violation of the principles of natural justice. He submits that the

appointment of the petitioner on contractual basis was for a period of 05 years or till completion of Khanij Online 2.0 Project, whichever is earlier. Respondent no. 3 earlier issued show cause notice with allegation and warning of the disciplinary action to be taken, but no departmental enquiry or any other kind of enquiry was conducted and major punishment of termination was imposed upon him before completion of his tenure. Earlier petitioner was served with a show cause notice leveling 06 allegations against him. But in the order of termination the reasons assigned is that his performance is not satisfactory. Before issuing the order of termination on the ground of non-satisfactory performance no intimation was given to petitioner of his adverse performance in any manner at any point of time. The petitioner was appointed on contract basis. He is governed by Chhattisgarh Civil Seva (Samvida Niyukti) Niyam, 2012 (herein referred to as "Rules of 2012"). According to Rule 15(3) of Rules of 2012 the performance appraisal report is to be assessed but before passing of an order no such report is provided to the petitioner and, therefore, the order Annexure P-1 is arbitrary and in contravention of Rules of 2012.

4. In support of his contention he places reliance upon the decision of Division Bench of this Court in Writ Appeal bearing WA No. 813 of 2018 decided on 28.03.2019 (Annexure P-6). He next submits that though petitioner was appointed on contractual basis, termination of service of petitioner, without holding any enquiry is in violation of principles of natural justice. He submits that the order of termination of service of petitioner,

has civil consequences, therefore, the enquiry on the allegations was necessary. He also submits that the order Annexure P-1 is passed in violation of Article 311 of the Constitution of India, because no departmental enquiry was conducted before terminating the service of petitioner. It is also submitted by learned counsel for petitioner that terminating the service of petitioner is also discriminatory because one similarly placed employee against whom show cause notice of almost similar allegation was issued, was not terminated from his service, in fact, he was shifted to other office on a higher post.

5. In support of his contention he places reliance upon the decision of Hon'ble Supreme Court in cases of **U.P. State Transport Corporation Vs. Brijesh Kumar and Another** arising out of **SLP(c) no. 10546/2019**, **Deepak Nanda Patil Vs. State of Maharashtra 2023** reported in **Live Law SC-30**, **Prakash Ratan Sinha Vs. State of Bihar** reported in **(2009) 14 SCC-690**, **Canara Bank and others Vs. Debasis Das** reported in **2003 4 SCC 557**, **Radheshyam Vs. State of UP** reported in **(2011) 5 SCC 553** and **Rajasthan State Road Transport Corporation Vs. Balmukund Bairwa** reported in **(2009) 4 SCC 299**.
6. Learned counsel for respondent no. 3 vehemently opposes the submission made by learned counsel for petitioner, and also raised preliminary objection on the maintainability of this writ petition. He submits that respondent no. 3 is a society and, therefore, the writ petition would not lie against the action of

society of passing of an order Annexure P-1 terminating the service of petitioner. He submits that petitioner was appointed by issuing of an offer letter/order Annexure P-2 dated 23.06.2021 which clearly envisaged that after successful joining, petitioner had to execute such agreement. He submits that the order Annexure P-1 terminating the petitioner from service is simplicitor and not punitive and, therefore, the enquiry, as argued by learned counsel for petitioner was not necessitated. He also submits that in the order Annexure P-1 there is no such remark which can be said to be stigma. Petitioner was earlier served with multiple notices to improve work being carried out by him in the year 2022 as well as in the year 2024. The order of termination is in accordance with law which is valid and does not suffer from an illegality or discrimination.

7. Respondent no. 1 and 2 submitted reply stating that the challenge in this writ petition is to the order Annexure P-1 which is issued by respondent no. 3 and, therefore, Respondent-State has no role to play and thereby, refrained itself from filing reply to this writ petition on merits of the case.
8. Petitioner submitted rejoinder to the reply submitted by respondent no. 3. In rejoinder though in para no. 3 petitioner has mentioned points on which reply was submitted, however, there is no specific pleadings refuting reply on behalf of respondent no. 3 pleadings therein that petitioner has not executed an agreement as mentioned in the order of

appointment. In rejoinder, it is also pleaded about the re-instatement of one of the employee namely Vivek Chandrakar on 05.11.2024 stating that he was earlier absent from the service from 20.03.2020 to 05.05.2020 and thereafter he was removed from service on 04.12.2020. By this pleading petitioner has made an attempt to make out the case for the action taken against the petitioner to be malafidy. It is also pleaded that action against the petitioner is only because he did not conspired with the officers/top functionaries of respondent no. 3 in the alleged corruption.

9. I have heard learned counsel for the respective parties, and also perused the documents placed on record along with this writ petition as also the reply and rejoinder.
10. It is not in dispute that petitioner was appointed as "System Administrator Cum Infra Consultant" by respondent no. 3 vide order dated 23.06.2021. Appointment of petitioner is on contractual basis for a period of 05 years from the date of joining or till completion of Khanij Online 2.0 Project.
11. So far as the objection raised by learned counsel for respondent no. 3 with regard to maintainability of this writ petition is concerned on the ground that respondent no. 3 is a society registered under the Chhattisgarh Society Registration Act, 1973 and, therefore, this writ petition is not maintainable, it is to be considered as to the nature/status of the society and its formation. Respondent no. 3 in its reply has placed on record the amended article of Association of Chhattisgarh Infotech

Promotion Society (CHiPS). Clause VII of the articles of association deals with “the governing council”. It mentions that the management of affairs of society is entrusted by articles of association of society on the governing council and description of the governing councils is mentioned therein by name and designation as also the post which they hold in governing council. Chief Minister of State of Chhattisgarh is mentioned to be the Chair person of the governing councils. Apart from other members Minister for Finance and Planning, Minister of Commerce, Minister of Education and Minister of Panchayat and Rural Development are members of the governing council. Few secretaries of the State of Chhattisgarh including the Chief Secretary are also members along with others. Total members of the governing council including the Chair person is mentioned to be 15 in number. Clause XIII provides for the funds for CHiPS. It consist of the grants made by Central Govt., State Govt. and other National/International agencies, Donation from National/International agencies/ Companies/ Organizations and earnings/other receipts from government or other sources. The aforementioned clauses of the article of association would show that the society is funded by the Central or State Govt. and further members of the governing councils are the ministers of the State as also the secretaries. It is managed and controlled by the State.

12. The writ petition lies against the State as defined under Article 12 of the Constitution of India. For maintaining the writ petition, the order of respondent no. 3, against the order of respondent

no. 3, the status of respondent no. 3 has to be within the definition of the State as provided under Article 12 of the Constitution of India.

13. Hon'ble Supreme Court in case of **Ajay Hasia and others Vs. Khalid Mujib Sehravardi and others** reported in **1981 Volume 1 SCC 722** has occasion to consider the issue whether registered society, if State – Other authorities contemplated in Article 12 or not. Hon'ble Supreme Court in that case has observed that the other authorities as contemplated under Article 12 of the Constitution of India to be State for the limited purpose of part III and IV and bound by the mandates thereof. In that case the Hon'ble Supreme Court has dealt with the grievance against the Regional Engineering College run by the Society registered under J& K Registration of Societies Act, 1989 and has observed as under :-

3. The Rules of the Society are also important as they throw light on the nature of the Society. Rule 3 clause (1) reiterates the composition of the Society as set out in clause 9 of the Memorandum of Association and clause (ii) of that Rule provides that the State and the Central Governments may by mutual consultation at any time appoint any other person or persons to be member or members of the Society. Rule 6 vests the general superintendence, direction and control of the affairs and its income and property in the governing body of the Society which is called the Board of Governors. Rule 7 lays down the constitution of the Board of Governors by providing that it shall consist of the Chief Minister of the State

Government as Chairman and the following as members: Three nominees of the State Government, three nominees of the Central Government, one representative of the All India Council for Technical Education, Vice-Chancellor of the University of Jammu and Kashmir, two industrialists/technologists in the region to be nominated by the State Government, one nominee of the Indian Institute of Technology in the region, one nominee of the University Grants Commission, two representatives of the Faculty of the College and the Principal of the college as ex officio member-Secretary. The State Government is empowered by Rule 10 to remove any member of the Society other than a member representing the State or Central Government, from the membership of the Society with the approval of the Central Government. Clause (iv) of Rule 15 confers power on the Board to make bye-laws for admission of students to various courses and clause (xiv) of that Rule empowers the Board to delegate to a committee or to the Chairman such of its powers for the conduct of its business as it may deem fit, subject to the condition that the action taken by the committee or the Chairman shall be reported for confirmation at the next meeting of the Board. Clause (xv) of Rule 15 provides that the Board shall have power to consider and pass resolution on the annual report, the annual accounts and other financial estimates of the College, but the annual report and the annual accounts together with the resolution passed thereon are required to be submitted to the State and the Central Governments. The Society is empowered by Rule 24 clause (i) to alter, extend or abridge any purpose or purposes for which it is established, subject to the prior approval of the State and the Central Governments and

clause (ii) of Rule 24 provides that the Rules may be altered by a resolution passed by a majority of 2/3rd of the members present at the meeting of the Society, but such alteration shall be with the approval of the State and the Central Governments.

6. But before we proceed to consider the merits of this ground of challenge, we must dispose of a preliminary objection raised on behalf of the respondents against the maintainability of the writ petition. The respondents contended that the college is run by a society which is not a corporation created by a statute but is a society registered under the Jammu & Kashmir Societies Registration Act, 1898 and it is therefore not an "authority" within the meaning of Article 12 of the Constitution and no writ petition can be maintained against it, nor can any complaint be made that it has acted arbitrarily in the matter of granting admissions and violated the equality clause of the Constitution. Now it is obvious that the only ground on which the validity of the admissions to the College can be assailed is that the Society adopted an arbitrary procedure for selecting candidates for admission to the College and this resulted in denial of equality to the petitioners in the matter of admission violative of Article 14 of the Constitution. It would appear that prima facie protection against infraction of Article 14 is available only against the State and complaint of arbitrariness and denial of equality can therefore be sustained against the Society only if the Society can be shown to be State for the purpose of Article 14. Now "State" is defined in Article 12 to include inter alia the Government of India and the Government of each of the States and all local or other authorities within the territory of India or under the control of the Government of India and the question

therefore is whether the Society can be said to be "State" within the meaning of this definition. Obviously the Society cannot be equated with the Government of India or the Government of any State nor can it be said to be a local authority and therefore, it must come within the expression "other authorities" if it is to fall within the definition of "State". That immediately leads us to a consideration of the question as to what are the "other authorities" contemplated in the definition of "State" in Article 12.

7. While considering this question it is necessary to bear in mind that an authority falling within the expression "other authorities" is, by reason of its inclusion within the definition of "State" in Article 12, subject to the same constitutional limitations as the Government and is equally bound by the basic obligation to obey the constitutional mandate of the fundamental rights enshrined in Part III of the Constitution. We must therefore give such an interpretation to the expression "other authorities" as will not stultify the operation and reach of the fundamental rights by enabling the Government to its obligation in relation to the fundamental rights by setting up an authority to act as its instrumentality or agency for carrying out its functions. Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. Now it is obvious that the Government may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions. In the early days when the Government had limited functions, it could operate effectively through natural persons constituting its civil service

and they were found adequate to discharge Governmental functions which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often specialized and highly technical in character and which called for flexibility of approach and quick decision making. The inadequacy of the civil service to deal with these new problems came to be realized and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the corporation came into being as the third arm of the Government and over the years it has been increasingly utilized by the Government for setting up and running public enterprises and carrying out other public functions. Today with increasing assumption by the Government of commercial ventures and economic projects, the corporation has become an effective legal contrivance in the hands of the Government for carrying out its activities, for it is found that this legal facility of corporate instrument provides considerable flexibility and elasticity and facilitates proper and efficient management with professional skills and on business principles and it is blissfully free from "departmental rigidity, slow motion procedure and hierarchy of officers". The Government in many of its commercial ventures and public enterprises is resorting to more and more frequently to this resourceful legal contrivance of a corporation because it has many practical advantages and at the same time does not involve the slightest diminution in its ownership and control of the undertaking. In

such cases "the true owner is the State, the real operator is the State and the effective controllorate is the State and accountability for its actions to the community and to Parliament is of the State." It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. If the Government acting through its officers is subject to certain constitutional limitations, it must follow a fortiori that the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations. If such a corporation were to be free from the basic obligation to obey the fundamental rights, it would lead to considerable erosion of the efficiency of the fundamental rights, for in that event the Government would be enabled to override the fundamental rights by adopting the stratagem of carrying out its functions through the instrumentality or agency of a corporation, while retaining control over it. The fundamental rights would

then be reduced to little more than an idle dream or a promise of unreality. It must be remembered that the Fundamental rights are constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The courts should be anxious to enlarge the scope and width of the fundamental rights by bringing within their sweep every authority which is an instrumentality or agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the fundamental rights. The constitutional philosophy of a democratic socialist republic requires the Government to undertake a multitude of socioeconomic operations and the Government, having regard to the practical advantages of functioning through the legal device of a corporation, embarks on myriad commercial and economic activities by resorting to the instrumentality or agency of a corporation, but this contrivance of carrying on such activities through a corporation cannot exonerate the Government from implicit obedience to the Fundamental rights. To use the corporate methodology is not to liberate the Government from its basic obligation to respect the Fundamental rights and not to override them. The mantle of a corporation may be adopted in order to free the Government from the inevitable constraints of red tapism and slow motion but by doing so, the Government cannot be allowed to play truant with the basic human rights.

Otherwise it would be the easiest thing for the Government to assign to a plurality of corporations almost every State business such as post and telegraph, TV and radio, rail road and telephones In short every economic activity - and thereby cheat the people of India out of the fundamental rights guaranteed to them. That would be a mockery of the Constitution and nothing short of treachery and breach of faith with the people of India, because, though apparently the corporation will be carrying out these functions, it will in truth and reality be the Government which will be controlling the corporation and carrying out these functions through the instrumentality or agency of the corporation. We cannot by a process of judicial construction allow the Fundamental rights to be rendered futile and meaningless and thereby wipe out Chapter III from the Constitution. That would be contrary to the constitutional faith of the post -Maneka Gandhi era. It is the fundamental rights which along with the directive principles constitute the life force of the Constitution and they must be quickened into effective action by meaningful and purposive interpretation. If a corporation is found to be a mere agency or surrogate of the Government, "in fact owned by the Government, in truth controlled by the Government and in effect an incarnation of the Government", the court, must not allow the enforcement of fundamental rights to be frustrated by taking the view that it is not the Government and therefore not subject to the constitutional limitations. We are clearly of the view that where a corporation is an instrumentality or agency of the Government, it must be held to be an "authority" within the meaning of Article 12 and hence subject to

the same basic obligation to obey the Fundamental rights as the Government.

8. We may point out that this very question as to when a corporation can be regarded as an "authority" within the meaning of Article 12 arose for consideration before this Court in *R.D. Shetty v. International Airport Authority of India*. There, in a unanimous judgment of three Judges delivered by one of us (Bhagwati, J.) this Court pointed out: (SCC pp. 506-07, para 13)

"So far as India is concerned, the genesis of the emergence of corporations as instrumentality or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated April 6, 1948 where it was stated inter alia that "management of State enterprise will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this." It was in pursuance of the policy envisaged in this and subsequent resolutions on Industrial policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily these functions could have been carried out by Government departmentally through its service personnel but the instrumentality or agency of the corporations was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself, though in the eye of the law, they would be distinct and independent legal entities. If Government acting through its officers is subject to certain

constitutional and public law limitations, it must follow a fortiori that Government acting through the instrumentality or agency of corporations should equally be subject to the same limitations."

The court then addressed itself to the question as to how to determine whether a corporation is acting as an instrumentality or agency of the Government and dealing with that question, observed: (SCC p. 507, para 14)

The court then proceeded to indicate the different tests, apart from ownership of the entire share capital: (SCC pp. 508 & 509, paras 15 & 16)

"... if extensive and unusual financial assistance is given and the purpose of the Government in giving such assistance coincides with the purpose for which the corporation is expected to use the assistance and such purpose is of public character, it may be a relevant circumstance supporting an inference that the corporation is an instrumentality or agency of Government... It may, therefore, be possible to say that where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character. But a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as State action". Vide *Sukhdev v. Bhagatram*. So also the existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality. It may also be a relevant factor to consider whether the corporation enjoys monopoly status which is State conferred or State protected. There can be little doubt that State conferred or State protected monopoly status would

be highly relevant in assessing the aggregate weight of the corporation's ties to the State...."

There is also another factor which may be regarded as having a bearing on this issue and it is whether the operation of the Corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must yield to a conception of State action where public functions are being performed. Vide Arthur S. Miller: *The Constitutional Law of the 'Security State*.

It may be noted that besides the so-called traditional functions, the modern State operates a multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. This is precisely what was pointed out by Mathew, J., in *Sukhdev v. Bhagatram* where the learned Judge said that 'institutions engaged in matters of high public interest of performing public functions are by virtue of the nature of the functions performed Government agencies. Activities which are too fundamental to the society are by definition too important not to be considered Government functions'."

9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the *International Airport Authority* case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution,

because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case as follows:

"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an

instrumentality or agency of Government. (SCC p. 509, para 16)

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government." (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case, be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12.

15. ....The State and the Central Government have even the power to appoint any other person or persons to be members of the Society and any member of the Society other than a member representing the State or the Central Government can be removed from the membership of the Society by the State Government with the approval of the Central Government. The Board of Governors, which is in charge of general superintendence, direction and control of the affairs of Society and of its income and property is also largely controlled by nominees of the State and the Central Governments. It will thus be seen that the State Government and by reason of the provision for approval, the Central Government also, have full control of the working of the Society and it would not be incorrect to say that the Society is merely a projection of the State and the Central governments and to use the words of Ray, C.J. in Sukhdev Singh Case the voice is that of the State and the Central governments. We must, therefore, hold that the Society is an instrumentality or

the agency of the State and the Central Governments and it is an “authority” within the meaning of Article 12.

14. In the case at hand as also in the article of association the control is within the State as the governing council consist of Chief Minister and other 04 ministers of the State of different department along with the secretaries of the State Government including Chief Secretary. The power is vested with the governing council to request for replacement of any institutional member and the number of members as mentioned therein can be modified according to the chair person (Chief Minister) and decision of the Chair Person of the governing council to be final.
15. In the aforementioned facts of the case, and the law laid down by the Hon'ble Supreme Court in case of **Ajay Haisa (supra)** respondent no. 3 /society would fall under the other authority within the meaning of Article 12 of the Constitution of India for the limited purpose of testing its action whether is in the spirit of Article 14 of the Constitution of India or not, and therefore, in the opinion of this Court the writ petition is maintainable and the objection raised by counsel for respondent no. 3 with regard to maintainability of this writ petition is hereby repelled.
16. Now I will consider the merits of the claim of the petitioner with regard to, order Annexure P-1 terminating the service of petitioner without conducting any enquiry to be in violation of the principles of natural justice. Petitioner was appointed by respondent no. 3 vide Annexure P-2 dated 26.03.2021. It mentions that the petitioner is appointed in the office of

respondent no. 3 on contract basis for a period of five years from the date of joining or till completion of Khanij Online 2.0 Project which ever is earlier on consolidated salary. It also mentions that the petitioner shall be on probation for a period of six months from the date of commencement of the duties, which may be further extended at the discretion from CHiPS. The order of appointment further mentions that the non-performance during this period shall result in the deemed termination and he will be discharged from services. Petitioner accept the offer/order of appointment and the terms and conditions as mentioned therein and according to the case of petitioner he joined the service. The order Annexure P-2 also mentions that after successful joining petitioner has to execute the agreement with CHiPS.

17. The pleadings made in reply by respondent no. 3 that after joining service, pursuant to order Annexure P-2 petitioner has not executed the standard agreement with CHiPS is not refuted in specific terms by petitioner even in his rejoinder to the reply. The order Annexure P-1 terminating the service of petitioner only mentions that, since passed few months petitioner's work performance in the office has not been found satisfactory. No other reasons has been assigned/mentioned in the order/notice. Annexure P-1 mentions that the service of petitioner would stand terminated with effect from 30<sup>th</sup> August 2024.
18. The submission of counsel for petitioner that the petitioner was not served with a confidential report/performance appraisal

report for its consideration and therefore, the order Annexure P-1 is in contravention of Rules of 2012 is concerned, Rule 15 of Rules of 2012 talks of other conditions and Rule 15(3) which is pressed upon is extracted below for ready reference:-

**15. Other conditions.-**

(1)

XXXXX

(2)

XXXXX

(3) [Confidential Report/P.A.R. (Performance Appraisal Report)] of the person, appointed on contract shall be recorded so that his work may be assessed in case he is to be considered for appointment on contract for the next year.

19. So far as the applicability of Rules of 2012 is concerned Rule 3 provides that these rules shall apply in relation to other such post/posts and to such persons appointed or who may be appointed under these rules on the post/posts declared as contract appointment post by the State Government under Rule 4. Rule 4 provides for appointment and the appointment on contract basis which is extracted below for ready reference:-

**4. Posts of Contract Appointment.-**The following posts shall be called as contract appointment post:-

(1) Such posts sanctioned as contract appointment posts in the departmental set up.

(2) Such sanctioned posts in regular establishment in the departmental set up which are likely to remain vacant for a period of one year or more due to unavoidable reasons.

(3) Such posts, which are likely to remain vacant for a period of one year or more due to non-availability of Government servants having minimum eligibility requirement or because of unavoidable reasons it is not possible to fill up the post by promotion, with approval of General Administration Department.

(4) Such posts, notwithstanding anything contained in departmental recruitment rules, which require specialization, experience and special qualification declared as contract appointment post by a general or special order in exceptionally special cases by the State Government to maintain the efficiency in public administration, except such post for which legal experience in the judicial service field is required under any law or rule for the time being in force.

(5) Posts sanctioned in the personal establishment of Chief Minister/ Ministers on which [appointments] are to be made till the tenure of Chief Minister/Ministers (co-terminus).

20. In the case at hand the appointment of petitioner is not in the establishment of respondent no. 3 but his appointment is for the specific project and the term of appointment is mentioned as for period of five years or completion of the project whichever is earlier. Rule 11 of Rules of 2012 talks of period of appointment, Rule 11(1) envisages that a contract appointment post mentioned under Rule 4 (1) first contract appointment shall be made for a period of three years, however, the State Government may take a decision for renewal of contract

appointment by extending the period of contract appointment for one year at one time depending upon the necessity and after assessing suitability of persons on contract. Rule 11(2) talks of for the post mentioned in Rule 4(2) and 4(3) that is with regard to the regular establishment for which contract appointment shall be normally for a period of one year.

21. Rule 15 of Rules of 2012 talks of other conditions and Rule 15(3) which is pressed upon by counsel for petitioner applies when the contract employee is considered for the appointment for contract for next year (further appointments).
22. In the facts of the case Rule 15(3) would not apply as it is not the case where the petitioner's service was not extended with further period but it is a case where service of petitioner was not found satisfactory during the period of contract.
23. In the scheme of the Rules of 2012 post on which contract appointment can be made is specified. Petitioner is not appointed on the post as mentioned under Rule 4 of Rules of 2012, but the appointment is project specific only. Further the maximum period at first instance is clearly critical provided under Rule 11 to be of 03 years, with renewal clause for post under Rule 4(1) of Rules of 2012. Under Rules of 2012 there is no provision for appointment on probation. The appointment of petitioner is on probation and the period of appointment is for 05 years or till completion of project. Upon reading of the conditions and terms of appointment it is apparent that appointment of petitioner is not under Rules of 2012 and

therefore, submission of the petitioner that the order Annexure P-1 is issued in contravention of the provisions under Rules of 2012 is not sustainable.

24. Further in the order of appointment it is mentioned that petitioner was initially appointed on probation and according to the case of respondent no. 3 petitioner did not execute the agreement as mentioned in the order of appointment.
25. Hon'ble Supreme Court in case of **Ajit Sing and Others Vs. State of Punjab and Another** reported in **1983 Volume 2 SCC 217** observed that period of probation gives time and opportunity to employer to watch the work, ability, efficiency, sincerity and competence of servant and if he is found not suitable for the post the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period for probation. Mere holding of a preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature.
26. In this case also though earlier show cause notice was issued to petitioner seeking explanation on points as mentioned therein, however, in the order of termination of service of petitioner there is no such mention of any kind of allegation or the reply submitted was not found to be satisfactory, but the order only mentions that the purpose of petitioner was not satisfactory.

27. In the aforementioned facts of the case the order of termination of the service of petitioner cannot be said to be punitive in nature. In case of **State of Punjab and others Vs. Sukhbeer** in **2005 Volume 5 SCC 569**, Hon'ble Supreme Court has held that High Court has gone completely wrong in drawing the inference that order of discharge dated 16.03.1990 was, in fact, based upon misconduct and was therefore, punitive in nature, which should have been preceded by a regular departmental enquiry. It further held that there cannot be any doubt that respondent was on probation having been appointed about eight months back and concluded that High Court was clearly in error in holding that respondent's absence from duties was foundation of order which necessitates an enquiry as envisaged under the rules.
28. Hon'ble Supreme Court in case of **Pavanendra Narayan Verma Vs. Sanjay Gandhi PG 1 of Medical Science** reported in **2002 Volume 1 SCC 520** while considering the issue as to whether mentioned of words "unsuitable for the job" would amount to stigma or not has observed as under :-

29. Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. What language in a termination order would amount to a stigma ? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order

may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.

29. In the case at hand as also the order only mentions that the order of termination/notice of termination is issued because the work performance of petitioner was found to be not satisfactory, which cannot be said to be the order to be punitive in nature, casting any stigma and therefore, the argument raised by learned counsel for the petitioner that the order Annexure P-1 is in violation of principles of natural justice, in the opinion of this Court and in view of decision's of Hon'ble Supreme Court is not sustainable.
30. For the forgoing discussions, I do not find any merit in this writ petition, its liable to be and is hereby **dismissed**. No order as to costs.

Certified copy as per rules.

sd/-

**(Parth Prateem Sahu)**

Judge