



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CWP No.1954 of 2020.**

**Reserved on : 26.08.2020.**

**Date of decision: 02.09.2020.**

**Kanwar Singh Sharma**

**.....Petitioner.**

**Versus**

**State of Himachal Pradesh and others**

**.....Respondents.**

***Coram***

**The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.  
The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.**

***Whether approved for reporting?*<sup>1</sup> Yes**

**For the Petitioner : Mr. Shrawan Dogra, Senior Advocate with Mr. Ramesh Sharma, Advocate.**

**For the Respondents:**

**Mr. Ashok Sharma, Advocate General with Mr. Vinod Thakur, Mr. Desh Raj Thakur, Additional Advocate Generals, Ms. Seema Sharma and Mr. Bhupinder Thakur, Deputy Advocate Generals, for respondents No.1 and 2.**

**Mr. Manohar Lal Sharma, Advocate, for respondent No.3.**

**Mr. H.S.Rangra, Advocate, for respondent No.4.**

<sup>1</sup>*Whether the reporters of the local papers may be allowed to see the Judgment?Yes*

**Mr. Shashi Shirshoo, Central  
Government Counsel, for  
respondent No.5.**

**Tarlok Singh Chauhan, Judge**

Aggrieved by the disengagement orders dated 12.05.2020 (Annexure P-8) and dated 08.05.2020 (Annexure P-10), the petitioner has filed the instant petition for grant of the following substantive reliefs:

- “(i) *That the disengagement orders Annexure P-8 dated 12-5-2020 and Annexure P-10 dated 8-5-2020 may kindly be quashed and set aside.*
- “(ii) *That the respondents may kindly be directed to allow the petitioner to continue his services till the Scheme is completed in 2022, and extend his contract period like other Experts.*
- “(iii) *That act and conduct of respondents may kindly be declared as arbitrary and discriminatory. The respondents may kindly also be directed to release the deducted salary of petitioner with interest.”*

2. The petitioner retired as Senior Law Officer on 31.12.2017 from the Office of the Director, Urban Development-cum-Mission Director (Nodal Officer), Pradhan Mantri Awas Yojna, Government of Himachal Pradesh, Palika Bhawan Talland, Shimla, after having served for 37 years in different departments of the State of Himachal Pradesh.

3. Respondent No.3 i.e. National Institute of Electronics and Information Technology (NIELIT), Hotel Cedarwood, Building, Jakhoo Road Shimla, H.P. advertised various posts including the post of Social Development Specialist on 25.02.2018. Interviews were conducted by a Board constituted by respondent No.3 on 06.03.2018 in which the petitioner was selected and given appointment vide order dated 08.03.2018 as Social Development Specialist in the Office of the Municipal Council at Sundernagar, District Mandi, Himachal Pradesh and joined on 08.03.2018.

4. Immediately thereafter, respondent No.2 i.e. Mission Director, transferred the petitioner from Municipal Council, Sundernagar and placed his services at the disposal of the State Level Technical Cell, Directorate of Urban Development under "Pradhan Mantri Awas Yojna- Housing for all Project", till further orders.

5. In compliance to the orders, the petitioner joined at Shimla on 12.03.2018 itself. Thereafter vide order dated 27.06.2018, the petitioner was directed to look after the work of Law Officer in addition to the Social Development Expert.

6. On 13.03.2019, an agreement for extension of contract of the petitioner for a period of one year was executed which was valid upto 07.03.2020.

7. Some of the salient features of the agreement as contained in Clause-1, 11, 12 and 15 are extracted below:

*"1. The individual contractor shall perform the function of Social Development Specialist at under Pradhan Mantri Awas Yojana Scheme/Project initially up to 07.03.2020. Unless extended, the contractual services shall automatically cease on the completion of the said period. The individual contractor will be paid consultancy fee of Rs.45000/- (Fourty Five Thousands only) per month.*

*11. The contract shall be terminated during the period of currency on any one day on 15 days' notice from either side.*

*12. The contractual services are initially upto 07.03.2020 and are purely temporary against the assigned project. In case the project is abandoned/discontinued, due to any reasons before the said period, the contractual services shall be terminated at fifteen days' notice. He/she will not be expected to leave employment during the contractual period without giving 15 days' notice before leaving the job failing which salary for shortfall in notice period shall be recovered.*

*15. The decision of the Director, NIELIT, Shimla Centre in all matters relating to this contract shall be final and binding on the contractor."*

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8. Even though, the project under which the petitioner was working is required to be implemented with effect from 17.06.2015 upto 31.03.2022, yet, respondent No.3 vide letter dated 12.05.2020 which was received by the petitioner on 01.06.2020 informed the petitioner that since his contract period had expired on 08.05.2020, he was not required to attend the office from the expiry date i.e. 08.05.2020 onwards.

9. It is vehemently argued by Shri Shrawan Dogra, Senior Advocate, assisted by Shri Ramesh Sharma, Advocate, for the petitioner that the action of the respondents is discriminatory as all other Experts including some retired Officers appointed under the same process at different intervals are still working with the respondents and it is only the petitioner, who has been singled out and thus the impugned orders are not only discriminatory, but are actuated by illegal malafides. In addition thereto, it is submitted that the action of the respondents is otherwise violative of the letter issued by the Ministry of Labour and Employment, New Delhi, on 20.03.2020 (Annexure P-14) whereby there is complete ban imposed by the Government on termination of services of any employee.

10. In the reply filed by respondents No.1 and 2, preliminary objection regarding maintainability of this petition has been raised. It is averred that the approval of the Government in filling up the post of Social Development Expert-CLTC under PMAY-HFA was only for one year which had expired on 07.03.2019 and no further approval of the Government was sought by respondent No.2/department. However, the contract of the petitioner was inadvertently extended upto 31.03.2020 by the department along with other Experts. So far as the other Experts under the Scheme are concerned, they were recruited as per the guidelines of the Scheme and the Mission Director i.e. respondent No.2 is competent authority to extend their contract. However, the case of the petitioner was different as he was engaged as Social Development Expert-CLTC (on outsource basis) under the Scheme as per the approval of the Government for one year. During the review of PMAY-HFA (Urban) by respondent No.2, it was observed that progress under PMAY-HFA (Urban) was not satisfactory and targets were not being achieved. Moreover, the petitioner, who was engaged as Social Development Expert-CLTC (on outsource basis) under PMAY-HFA (Urban) Scheme was only looking after the work of Law Officer and the work under the

Scheme was suffering. It was also observed that it was not warranted to appoint any person to perform the work of Law Officer and it was decided not to extend the contract period of the petitioner. In addition, it is averred that even this Court while deciding CWPIL No. 201 of 2017 titled 'Court on its own motion versus State of Himachal Pradesh and others' vide judgment dated 19.12.2017 has already settled the issue of re-employment of retired government servants and clearly directed that no employee shall be given extension or be re-employed beyond the age of superannuation.

11. On merits, the pleas taken in the preliminary objection have simply been reiterated by referring to Rule 22.4 of Chapter 22 of the Handbook on Personnel Matters, Volume-II, Second Edition.

12. At this stage, we may note that second respondent while filing reply to the application for interim relief has clearly averred that the applicant/petitioner has been removed from his post after due application of mind as his work, conduct and performance was unsatisfactory.

13. In its reply, respondent No.3 has simply averred that it was in the discretion of respondent No.2 to continue or not to continue with the services of the petitioner and once it decided

not to continue with the services of the petitioner, therefore, replying respondent had no option, but to comply with the said instructions.

14. We have heard the learned counsel for the parties and have gone through the records of the case.

15. It is not in dispute that the Scheme in question against which the petitioner was appointed was valid upto 31.03.2022. It is further not in dispute that out of 34 Consultants, it is only the petitioner whose services have not been re-engaged on the ground that his contract or services have come to an end, though the contract of the other 33 Consultants had also come to an end.

16. Records reveal that before the contract of the petitioner could come to an end, a proposal had already been mooted by the department for continuing the services of all the 34 Consultants including the petitioner for further period of one year, as would be evident from Note-31 of the file which reads as under:

*"In view of above, the contract agreement of 34 Nos. consultants (as per the Annex-I) whose contracts are going to expire during on 31.03.2020 may be allowed to continue for another year or till the project lasts. A letter*

*in this regard addressed to Director-In-Charge, NIELIT Shimla has also been drafted and placed below."*

17. This proposal was not accepted as it is as respondent No.2 was of the opinion that this could be decided only after the performance reviewed, as is evident from the Note dated 04.03.2020, which reads as under:

*"Pl. discuss only after performance reviewed. Fix date for performance. Target given achieved etc."*

18. The notings appearing in the file thereafter are as under:

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| -44- | <p>While extending the contract of out-sourced or contract manpower it is imperative that the performance of the employed manpower has to be evaluated. The evaluation remarks are to be given by the immediate officers who are supervising the work of the immediate subordinate officials. These all are employed under the different projects and the project branch has to make an assessment subjectively. Mere job profile document is not sufficient to evaluate the performance rather the factual work assigned to the officials is required to be assessed. Hence may please put up accordingly.</p> <p>Sd/- 17.4.</p> |
| -45- | P/O.  |
| -46- | <p><u>N-44-45:</u> The working of experts working under various schemes are satisfactory. May consider pl.</p> <p>Sd/-<br/>21.4.2020</p>  |

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| <p>-47-</p> | <p>Pl. put up with the Goals fixed and achieved.<br/>Sd/-<br/>22/4/</p>  |
| <p>-48-</p> | <p>Kindly see No.47 above-<br/>In this context it is submitted that no such individual goals were fixed by the Deptt. Pl.<br/>Submitted pl.<br/>Sd/-<br/>27/4/</p>   |
| <p>-49-</p> | <p>We have given them target to be achieved which were being received in the meetings for which PO is the nodal officer.<br/>Sd/-<br/>28/4</p>   |
| <p>-50-</p> | <p><u>N-49</u>:-The required information w.r.t. PMAY is placed at flag-A pl. The annual target and achievement under NVCS is placed at flag-B pl.<br/>Sd/-<br/>1.5.20<br/>In reference of N-49 Pl.<br/>Sd/- 2/5.</p> |
| <p>-51-</p> | <p>Pl. examine and put up expertwise targets fixed and achieved on the file and gap in targets.<br/>Sd-<br/>2/5</p>  |
| <p>-52-</p> | <p>Accordingly Expert-wise targets UCB-wise and district-wise which were received is placed below for perusal please.<br/>Sd/-<br/>4/5</p>   |
| <p>-53-</p> | <p>The details of targets fixed and achieved, Nov.2019 to March, 2020, is placed on the file 'A'. As per version of PO earlier to it those were not targets fixed for the</p>  |

|                         | <p>experts.<br/>Sd/-<br/>4/5/2020</p> <p>As discussed. Pl. put up<br/>Sd/-<br/>4/5/20</p>  |                |          |              |                         |                 |        |              |       |   |                 |          |   |               |   |   |              |                  |        |
|-------------------------|--|----------------|----------|--------------|-------------------------|-----------------|--------|--------------|-------|---|-----------------|----------|---|---------------|---|---|--------------|------------------|--------|
| -54-                    | <p>As per the details given on the sheet flagged 'A' except Smt. Rita whose overall target was fixed 57 has achieved less by 7 houses. But if assessed district-wise the targets of following districts are less:</p> <table> <thead> <tr> <th>Name of Expert</th> <th>District</th> <th>Less Targets</th> </tr> </thead> <tbody> <tr> <td>1. Ms. P. Zinta<br/>-do-</td> <td>Kullu<br/>Shimla</td> <td>5<br/>8</td> </tr> <tr> <td>2. Sn. Anoop</td> <td>Mandi</td> <td>3</td> </tr> <tr> <td>3. Sh. Harinder</td> <td>Hamirpur</td> <td>9</td> </tr> <tr> <td>4. Sh. Vishal</td> <td>-</td> <td>-</td> </tr> <tr> <td>5. Smt. Rita</td> <td>Sirmaur<br/>Solan</td> <td>1<br/>6</td> </tr> </tbody> </table> | Name of Expert | District | Less Targets | 1. Ms. P. Zinta<br>-do- | Kullu<br>Shimla | 5<br>8 | 2. Sn. Anoop | Mandi | 3 | 3. Sh. Harinder | Hamirpur | 9 | 4. Sh. Vishal | - | - | 5. Smt. Rita | Sirmaur<br>Solan | 1<br>6 |
| Name of Expert          | District   | Less Targets   |          |              |                         |                 |        |              |       |   |                 |          |   |               |   |   |              |                  |        |
| 1. Ms. P. Zinta<br>-do- | Kullu<br>Shimla  | 5<br>8         |          |              |                         |                 |        |              |       |   |                 |          |   |               |   |   |              |                  |        |
| 2. Sn. Anoop            | Mandi  | 3              |          |              |                         |                 |        |              |       |   |                 |          |   |               |   |   |              |                  |        |
| 3. Sh. Harinder         | Hamirpur   | 9              |          |              |                         |                 |        |              |       |   |                 |          |   |               |   |   |              |                  |        |
| 4. Sh. Vishal           | -  | -              |          |              |                         |                 |        |              |       |   |                 |          |   |               |   |   |              |                  |        |
| 5. Smt. Rita            | Sirmaur<br>Solan   | 1<br>6         |          |              |                         |                 |        |              |       |   |                 |          |   |               |   |   |              |                  |        |
| -55-                    | <p>Sd/-<br/>5.5.2020</p>   |                |          |              |                         |                 |        |              |       |   |                 |          |   |               |   |   |              |                  |        |
| -56-                    | <p>Since Mission time line is only upto March 2022. We have a target of 9093 houses to be completed. Last financial year 2018-19 about 951 houses constructed. In the recently closed fY 2019-20 only 935 houses completed. The seriousness of SLTC reflects from this data only. They were given a target of 2000 houses in the last FY 2019-20. Against with target achieved is 933 only. In this way it will require about 10 years for completion of target. Progress does not seem satisfactory. Ask them to show cause for such dissatisfaction progress.</p>  |                |          |              |                         |                 |        |              |       |   |                 |          |   |               |   |   |              |                  |        |
| -57-                    | <p>Meanwhile ask them to concentrate this year targets as well right from now without wasting any further time.</p> <p>Sd/-<br/>5.5.20</p>   |                |          |              |                         |                 |        |              |       |   |                 |          |   |               |   |   |              |                  |        |

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| <p>-58-</p> | <p>N.54 to 57:- The details of Experts Manpower engaged under PMAY-HFA is placed below at flag 'A' for kind perusal please.</p>   |
|             | <p>In this context, it is submitted that Sh. Kanwar Singh Sharma Social Development Spl (SDS) who is retired Sr. Law Officer of this office have been engaged as Social Development SPI (SDS) (on out-source basis) through NIELIT, Shimla w.e.f. 8.3.2018.</p>   |
| <p>-59-</p> | <p>(May see Flag B to E), as per approval of the Govt. dated 2.02.18 for the period of one year. The period of approval of the Govt. for one year has expired on 7.3.2019 and thereafter no further approval of the Govt. have sought by the Department.</p>  |
| <p>-60-</p> | <p>Moreover, the contract in respect of above expert have also been expired on 31.3.2020 alongwith other 10 Nos. expert, please.</p>  |
| <p>-61-</p> | <p>In view of the above, the file is submitted for favour of kind perusal and further directions in the matter, please. Submitted please.</p>   |
|             | <p>Sd/-08.05.2020</p>   |
| <p>-62-</p> | <p><u>Supdt Gr.-II</u><br/><u>Supdt Gr-I</u><br/>Sd/-08/5/20.</p>   |
|             | <p>As per N-59 the approval for one year of Govt. had come</p>  |
| <p>-63-</p> | <p>to an end on 31.3.2019 but under letter No. 5536 dt. 8.3.2019 of this Directorate the period was further extended for one year i.e. up to 31.3.2020. If approve, we may write to the AD for ex-post-facto approval for the last year and decision for further period as at present in this Directorate no Law officer to look after the legal matters going on in different courts will be</p> |

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|      | available till some arrangement is made.<br>Sd/- 8.5.2020  |
| -64- | <u>It is very strange incident. Since the progress under PMAY is not so satisfactorily, we have entered into the 2<sup>nd</sup> last year of the PMAY (U), which is going to be over by March 2022. By this date, we have to complete all the houses sanctioned by the Govt. of India i.e. 9093 no. At present we have constructed only 1852 houses and this year upto 31<sup>st</sup> March only 952 houses. At this place, we will require 10 years to complete the target houses. Therefore, to achieve this target we have fixed a target of construction of 6000 houses this year 2020-21 so that the mission target be achieved by March 2022.</u> |
| -65- | <u>This can be done by aligning all our resources sanctioned under PMAY (U) in the right direction. Also we have to fill up the vacant position immediately. To appoint under this scheme for other functions is not warranted by the MOH&amp;UA. Hence, the proposal of Additional Director is in violation of the guidelines of the MOH&amp;UA and nobody can be engaged to perform other functions under this Scheme.</u>   |
| -66- | <u>So it is not warranted to appoint any person to perform the work of Law Officer under this scheme. Hence, we may not recommend the extension further. If required, we may send case separately to the Govt. of HP for appointment of Law Officer on 2<sup>nd</sup>ment basis and not under this Scheme.</u>   |
| -67- | <u>Hence, we may direct the NIELIT not to extend the period further after 8<sup>th</sup> May, 2020. Other experts who are performing the work of PMAY(U) be extended till one year from the date of expiry i.e. 31.3.2020 except</u>   |

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|------|---|
|      | <u>above, which will be till 8<sup>th</sup> May, 2020 as already salary fixed till 30<sup>th</sup> April.</u>                   |
| -68- | <u>Issue necessary directions to the NIELIT as well all concerned. Also a new agreement be signed.</u><br><u>Sd/- 8/5/2020.</u> |

19. It would be noticed that upto N-57, there was no discussion whatsoever regarding the petitioner nor his name figured in the list of Experts, who had not been able to achieve the targets. Yet, a note appears at N-58, where for the first time, it is pointed out that the petitioner has been engaged Social Development Specialist (SDS) through respondent No.3 with effect from 08.03.2018 and the approval of the Government is for a period of one year which has expired on 07.03.2019 and thereafter no further approval of the Government has been sought by the department. In the next noting, it is pointed out that the contract in respect of the petitioner has expired on 31.03.2020 along with ten other Experts. It is then that the notings of respondent No.2-Director appear at N-64 to 68. Admittedly, prior to this noting, there was no notice much less show cause notice issued to the petitioner regarding his work and conduct etc. being not satisfactory.

20. Records also reveal that it was the respondent-department itself which right from the beginning was keen to have the services of the petitioner, more particularly, as a Law Officer and that is why immediately after his appointment on 08.03.2018 at Sundernagar, the petitioner was transferred to the Office at Shimla and placed at the disposal of State Level Technical Cell, Directorate of Urban Development under "Pradhan Mantri Awas Yojna- Housing for all Project" and was made to look after the work of Law Officer in the Directorate. This is clearly evident from the documents appended by the respondents themselves with their reply.

21. Even prior to the retirement of the petitioner, respondent No.2 vide letter dated 25.11.2017 (Annexure R-1) had requested for extension of his services by one year. The request was reiterated by another letter dated 23.12.2017 (Annexure R-II). Not only this, the petitioner had retired on 31.12.2017, respondent No.2 again sought extension of his services vide letter dated 18.01.2018, the relevant portion whereof reads as under:

*"The post of Law Officer is of utmost-importance in this Department and in the absence of Law Officer, the work of this Department particularly court matters are suffering badly as there is no other official ripe enough*

*to take over the job of Sr. Law Officer being technical in nature requiring Law Degree and knowledge/experience etc. Thus, this post of Law Officer cannot be kept vacant in the public interest as well as in the interest of the Department.*

*It is further submitted that one post of Social Development Expert under City Level Technical Cell of PMAY-HFA (a Flagship Programme of MoHUA, Gol) is lying vacant in Municipal Council, Sundernagar. The qualification and experience for the post is Post Graduate/Graduate or Diploma in Social Science with practical experience of working with community of Urban areas, 3-5 years experience in undertaking social and community development activities. Experience in participatory methods/planning and community mobilization. As Sh. Kanwar Singh Sharma has recently retired from the post of Senior Law Officer of this Directorate is having diploma in Social Science and have a vast service experience, so the candidature of Sh. Kanwar Singh Sharma, retired Senior Law Officer is proposed for this post on outsource basis(copy of terms of references ToR enclosed), who will also look after the work of Law Officer of this Directorate and thus, the work of Legal Cell of this Officer will not suffer to some extent.*

*In view of the above, it is requested to consider the matter at Govt. level and accord approval of the Govt. for engagement of Sh. Kanwar Singh Sharma, retired Sr. Law Officer of this Directorate on outsource basis against the post of Social Development Expert under SLTC PMAY-HFA at Sundernagar in the Directorate of Urban*

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*Development at fixed emoluments @ Rs.45,000/- p.m. in the public interest, please."*

22. It is not in dispute that another Social Development Specialist Ms. Poonam Sharma was appointed along with the petitioner and her services have been continued while the services of the petitioner have been dispensed with. Thus, there is gross arbitrariness and discrimination in the action of respondent No.2 and it is clearly a case of invidious discrimination of the petitioner vis-a-vis similarly situate persons that too without any rational basis.

23. The State has the duty to observe equality. An ordinary individual can choose not to deal with any person, but Government cannot choose to exclude persons by discrimination. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.

24. The Government is a Government of laws and not of men. The petitioner was entitled to equal treatment with others, who were appointed in the same manner as the petitioner. Democratic form of Government demands equality

and absence of arbitrariness and discrimination. There are limitations upon exercise of authority by the State and that is to act fairly and rationally without any way being arbitrary and thereby such a decision can be taken for some legitimate purpose. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure.

25. This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily as its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant.

26. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by

rational, relevant and non- discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

27. It is more than settled that where power is conferred to achieve a purpose, it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context "in good faith" means "for legitimate reasons". Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated. If it is exercised for an extraneous, irrelevant or non-germane consideration, the acquiring authority can be charged with legal mala fides.

28. In ***State of Punjab vs. Gurdial Singh and others*** **[1980] 1 S.C.R. 1071**, acquisition of land for constructing a grain market was challenged on the ground of legal mala fides. Upholding the challenge, the Hon'ble Supreme Court speaking through Krishna Iyer, J. explained the concept of legal malafides

in his hitherto inimitable language, diction and style and observed as under:

*"Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions- is the attainment of ends beyond the sanctioned purposes or power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested, the court calls it a colourable exercise and is undeceived by illusion...."*

29.

In **West Bengal State Electricity Board vs. Dilip Kumar Ray, AIR 2007 SC 976**, the Hon'ble Supreme Court

dealt with the term "malice" by referring to various dictionaries etc. as:

*"Malice in the legal sense imports (1) the absence of all elements of justification, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wanton and*

*wilful doing of an act with awareness of a plain and strong likelihood that such harm may result.*

*‘MALICE’ consists in a conscious violation of the law to the prejudice of another and certainly has different meanings with respect to responsibility for civil wrongs and responsibility for crime.”*

30. Mala fides, where it is alleged, depends upon its own facts and circumstances, in fact has to be proved. It is a deliberate act in disregard of the rights of others. It is a wrongful act done intentionally without just cause or excuse. (See : **State of Punjab vs. V.K. Khanna & Ors., AIR 2001 SC 343; State of A.P. and others vs. Goverdhanlal Pitti, AIR 2003 SC 1941; Probodh Sagar vs. Punjab SEB & Ors., AIR 2000 SC 1684; and Chairman and MD, BPL Ltd. vs. S.P. Gururaja & Ors., AIR 2003 SC 4536**).

31. In **Goverdhanlal Pitti’s case** (Supra), the Hon’ble Supreme Court ruled thus:

*“Legal malice” or “malice in law” means “something done without lawful excuse”. In other words, “it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others”. (See: Words and Phrases Legally Defined, 3<sup>rd</sup> Edn., London Butterworths, 1989)”*

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*"Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object."*

32. In **Kalabharati Advertising vs. Hemant Vimalnath Narichania & Ors.**, **AIR 2010 SC 3745**, the Hon'ble Supreme Court observed as under:

*"25. The State is under obligation to act fairly without ill will or malice- in fact or law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill felling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts.*

*26. Passing an order for an unauthorized purpose constitutes malice in law."*

33. Adverting to the facts, it would be noticed from the notings (supra) that respondent No.2. has not exercised reasonably and in good faith the power vested in him.

34. As observed by the Hon'ble Supreme Court, passing an order for an unauthorized purpose constitutes malice in law.

35. After analyzing the factual matrix, we have no hesitation in concluding that the exercise of powers by respondent No.2, more particularly, by introducing the name of the petitioner in the noting sheets and thereafter seeking justification for not continuing with the contract of the petitioner is goaded by extraneous considerations and it is a colourable exercise and is deceived by illusion.

36. In coming to the aforesaid conclusion, we are further supported by the fact that even though there was no complaint regarding working of the petitioner either as a Social Development Expert or as a Law Officer, yet, respondent No.2 was bent upon and rather determined to show the petitioner the door.

37. Additionally, the action of the respondents is bad in not renewing the contract of the petitioner in view of the instructions issued by the Central Government vide letter dated 20.03.2020 (Annexure P-14) through the Ministry of Labour and Employment, New Delhi, which read as under:

*"In the backdrop of such challenging situation, all the Employers of Public/Private Establishments may be*

*advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty.*

*The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic. In view of this, you are requested to issue necessary Advisory to the Employers/Owners of all the establishments in the State."*

38. In light of the aforesaid discussion, we find merit in this writ petition and the same is accordingly allowed and the disengagement orders dated 12.05.2020 (Annexure P-8) and dated 08.05.2020 (Annexure P-10) are quashed and set aside. The respondents are directed to re-engage the petitioner forthwith as Social Development Specialist on contract basis on the same terms and conditions on which he was working earlier till the same is completed in 2022 and extend his contract period as has been done in the case of his counter-parts.

However, since the petitioner has not worked for this period, therefore, he is not entitled for the salary of this period. ◇

39. Pending application(s), if any also stand disposed of.

**(Tarlok Singh Chauhan)  
Judge**

**(Jyotsna Rewal Dua)  
Judge**

**2<sup>nd</sup> September, 2020.  
(krt)**

High Court