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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 01.05.2020

\+ **LPA 595/2019 & C.M.Applns.49913-14/2019**

MANISHA PRIYADARSHINI ..... Appellant
Through: Mr. Darpan Wadhwa, Senior Advocate with Mr. Kush Chaturvedi, Ms. Prerna Priyadarshini and Ms. Aditi Agarwal, Advocates

versus

AUROBINDO COLLEGE - EVENING & ORS .....Respondents
Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr.Rajinder Dhawan and Mr. B.S.Rana, Advocates for respondents No.1 &2/College
Mr. Mohinder J.S.Rupal, Advocate for respondent No.3/University

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. This appeal has been preferred against the judgment dated 20.08.2019, whereby the learned Single Judge has dismissed *in limine*, W.P.(C) 8518/2019 filed by the appellant/petitioner with the following prayers: -

> *(a) this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, quashing the Impugned letter of termination*

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dated 29.05.2019 issued by the Respondent No.1 College:

(b) this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondent No.1 College to reinstate the Petitioner to the post of Assistant Professor on Ad Hoc basis from 20.03.2019.

(c) *Costs of the Petition be provided for.*

2. The facts, as are relevant for the purposes of disposal of the present appeal, are that since 07.08.2019, the appellant/petitioner has been working as an ad-hoc Assistant Professor in different colleges affiliated with the respondent No.3/University of Delhi and finally, in the respondent No.1/Sri Aurobindo College-Evening, of which the respondent No.2 is the Principal. According to the appellant/petitioner, the routine practice adopted by the respondents No.1 & 2/College and other colleges affiliated to the respondent No.3/University was to renew the contractual appointment of ad-hoc professors every 120 days, by enforcing a notional or artificial break in service of one working day. The last renewal of the appellant/petitioner's contract was done on 19.11.2018 from 19.11.2018 to 18.03.2019.

3. The appellant/petitioner claims to be the Senior-most ad-hoc Assistant Professor in the Department of English in the respondents No.1 & 2/College.

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She states that as she was expecting her first child on 22.02.2019, she had requested the respondents No.1 & 2/College for grant of maternity leave alongwith all other eligible benefits under the Maternity Benefit Act, 1961 and had specifically sought leave from 14.01.2019 till 24.05.2019, particularly, in view of the complications of pregnancy. This request was made by her vide letter dated 04.01.2019. Since no response was received thereto, she reiterated her request on 16.01.2019, seeking permission to proceed on maternity leave from 21.01.2019 onwards.

4. On 03.02.2019, the appellant/petitioner was blessed with a daughter prematurely. Since the respondents No.1 & 2/College impliedly rejected her representation for maternity leave by crediting a salary of only 18 days in her account, the appellant/petitioner filed a writ petition bearing No.3160/2019 on 20.03.2019, praying *inter alia* for grant of maternity leave as well as for quashing of the notification dated 11.10.2013, issued by the respondent No.3/University extending the benefit of maternity leave only to permanent teachers. She also sought a mandamus to the respondents No.1 & 2/College to extend maternity benefits to her.

5. The appellant/petitioner has averred that she reported back to the respondents No.1 & 2/College on 20.3.2019. On 26.03.2019, she reiterated her request for maternity leave. On 27.03.2019, she received a communication from the respondents No.1 & 2/College informing her that the college had not "forced" her to join duty and that she should also inform the college of the date when she *"intended"* to join, thus, indicating that she was still on their rolls. However, on 12.04.2019, the respondent No.3/University informed the respondents No.1 & 2/College that maternity

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leave benefit was not available to contractual employees, which information was in turn forwarded by them to the appellant/petitioner vide letters dated 16.04.2019 and 13.05.2019, thus, rejecting her request for grant of maternity leave.

6. The appellant/petitioner submits that on 14.05.2019, she had reiterated her willingness to re-join the respondents No.1 & 2/College from 24.05.2019 onwards, which was rejected by them vide letter dated 16.05.2019. However, on 24.05.2019, when she reported to the college for joining her duties and repeated the same request on 27.05.2019, in a *mala fide* and wholly illegal manner the respondents Nos.1 & 2/College informed her on 29.05.2019, that as her tenure had ended on 18.03.2019, she was no longer on the rolls of the college and therefore, there was no question of her joining back on duty or being assigned any work. Aggrieved thereby, she filed the petition, which has been dismissed *in limine* vide the impugned order and judgement dated 20.08.2019.

7. Mr. Darpan Wadhwa, learned Senior Advocate appearing for the appellant/petitioner has submitted that the appellant/petitioner was the Senior-most ad-hoc Assistant Professor working in the English Department of the respondents No.1 & 2/College and that after her service was terminated illegally and unlawfully, those who were junior to her, were given extensions throughout the same academic year, right from May, 2019 till date. If there was a need for fewer ad-hoc teachers, then the last come had to go first and not the Senior-most, i.e., the appellant/petitioner herein particularly when she had disclosed her availability. It was further contended that the practice had always been to give a break in service and therefore, it

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did not lie in the mouth of the respondents to claim that since the appellant/petitioner had reported for duty on 20.03.2019, after the expiry of her tenure on 18.03.2019, she had lost her right for extension of her term of ad-hoc appointment. It was also argued that it was only because the appellant/petitioner had insisted on maternity benefits that, out of sheer vengeance, her ad-hoc appointment was not extended and therefore, the termination letter was liable to be quashed.

8. On the other hand, Mr. Mohinder J.S.Rupal, learned counsel appearing for the respondent No.3/University submitted that no ad-hoc teacher was entitled to maternity leave as the Rules did not provide for the same and the appellant/petitioner could not seek any such benefit or claim extension of her tenure on the plea that when her tenure had ended on 18.03.2019, being on maternity leave, she was still on the rolls of the respondents No.1 & 2/College. It was also submitted that there is no vested right in ad-hoc teachers to claim extension of tenure.

9. Mr. Sudhir Nandrajog, learned Senior Advocate appearing for the respondents No.1 & 2/College supported the impugned judgement and pointed out that the offer of the appellant/petitioner to join duty on 24.05.2019, was neither here nor there since the summer vacation was to commence on that date and the College was closed with no teaching activity. He submitted that the appellant/petitioner had not disclosed that she was ever willing or readily available for teaching in the following semesters and therefore, it cannot be stated that the respondents No.1 & 2/College had violated any law while appointing other teachers on an ad-hoc basis who were available to attend to the semester classes, even if they were junior to

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the appellant/petitioner.

10. It was further contended on behalf of the respondents No.1 & 2/College that it was well within its right to terminate the appointment of the appellant/petitioner as her appointment letter itself contained such a clause. Since maternity leave was not available to the appellant/petitioner as per the University Rules, her non-reporting for duty from 21.01.2019 to 18.03.2019, was improper and in any case, non-extension of her tenure was clearly on account of her unavailability to take classes because on her own showing, she was attending to her new born baby and her repeated representations were to the effect that it would be extremely difficult for her and her little baby if she was forced to join on the threat of loss of job. According to learned counsel for the respondents No.1 & 2/College, despite this, the College was magnanimous enough to have asked the appellant/petitioner on 27.03.2019, as to when could she join the College but she waited till 14.05.2019 to respond to this letter, by which time, the College was about to break for the summer vacation. Therefore, non-assignment of any work to her on her request dated 27.05.2019, was neither illegal, nor *mala fide*. With these pleas, the respondents have prayed that the present appeal merited dismissal.

11. We have heard the submissions of the learned counsel for the parties and have carefully perused the record, including the correspondence exchanged between the parties. Before proceeding further, it may be noted here that vide Advertisement dated 01.11.2019, the respondents No.1 & 2/College had invited applications for making appointments to the posts of Assistant Professors on a permanent basis and the appellant/petitioner has

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also applied for the same. Further, having regard to the fact that W.P.(C) 3160/2019 filed by the appellant/petitioner for grant of maternity leave, is still pending, we shall refrain from going into that aspect. However, it does appear from the material on record that the insistence of the appellant/petitioner for grant of maternity benefit, has irked the respondents No.1 & 2/College, which appears to be the underlying reason for non-extension of her tenure beyond 18.03.2019.

12. There is no dispute that the appellant/petitioner was first employed as an ad-hoc Assistant Professor on 20.08.2014 and ever since then, her appointment had been renewed by the respondents No.1 & 2/College from time to time in the following manner: -

(i)	20.08.2014 to 17.12.2014		
(ii)	19.12.2014 to 17.04.2015		
(iii)	20.04.2015 to 22.05.2015		
(iv)	23.05.205 to 19.07.2015	-	Vacation
(v)	20.07.2015 to 17.08.2015		
(vi)	19.08.2015 to 16.12.2015		
(vii)	18.12.2015 to 15.04.2016		
(viii)	18.04.2016 to 20.05.2016		
(ix)	21.05.2016 to 19.07.2017	-	Vacation
(x)	20.07.2016 to 16.11.2016		
(xi)	18.11.2016 to 17.03.2017		
(xii)	21.03.2017 to 19.05.2017		
(xiii)	20.07.2017 to 16.11.2017		
(xiv)	18.11.2017 to 17.03.2018		
(xv)	20.03.2018 to end of session 2017-18		
(xvi)	20.07.2018 to 16.11.2018; and		
(xvii)	19.11.2018 to 18.03.2019		

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13. As can be seen from the above computation, the appellant/petitioner has remained as an Assistant Professor on an ad-hoc basis in the respondents No.1 & 2/College for five years with a break in service for a couple of days on each renewal. There is also no dispute that amongst the four ad-hoc Assistant Professors in the English Department engaged by the respondents No.1 & 2/College, including the appellant/petitioner, she was the Senior-most. Admittedly, the remaining three ad-hoc teachers have been re-employed by the respondents No.1 & 2/College from May, 2019 onwards till date, whereas, the appellant/petitioner has been denied that opportunity.

14. The respondents No.1 &2/College have not raised any grievance that the performance of the appellant/petitioner as a teacher has been below par, to give the others an advantage over her. The only fact that distinguishes her from the others is that she elected to be a mother and on account of the demands of the new born baby, sought maternity leave from the respondents No.1 & 2/College.

15. No doubt, the Rules of the respondent No.3/University, as reflected from Resolution No.120(8), at Appendix-V, approving the Report of the Committee appointed by the Vice Chancellor of the Delhi University in terms of the AC Resolution No.34 dated 23.04.2005, excluded *'maternity leave*' from *'admissible leave'*. However, leave other than maternity leave, such as half pay leave on medical grounds, casual leave and earned leave, were admissible even at the time when the appellant/petitioner had proceeded on leave, which could have been granted to her instead. Therefore, the contention of the respondents No.1 & 2/College that she was not on the rolls when her tenure had ended, as she was not available for

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teaching, cannot be accepted as a justification for non-extension of her tenure thereafter. Moreover, the details of the extensions granted to the appellant/petitioner over five years, as reproduced hereinabove, also show that her reporting for duty on 20.03.2019, instead of on 18.03.2019 or 19.03.2019, cannot be taken against her inasmuch as all the extensions have been made with a break of at least one day.

16. There is no gain saying that an act of an administrative authority has to be pervaded by fairness and can never smack of arbitrariness or whimsicality. In the instant case, the appellant/petitioner has been working in the respondents No.1 & 2/College for five years, having been granted repeated extensions with a break in service, as found necessary by the respondents No.1 & 2/College, to maintain her appointment as ad-hoc in nature. There has been no complaint regarding her work performance. Therefore, her proficiency and ability did not form the basis of the decision of the respondents No.1 & 2/College to decline extending her services despite the necessity, as is reflected from their continuing with the other ad-hoc Assistant Professors in the English Department as also Guest Lecturers.

17. The only reason that stares in the face is the fact that knowing that she was an ad-hoc teacher, the appellant/petitioner had applied for maternity leave. Without commenting on the rule position regarding her entitlement to maternity leave, which is the subject matter of a pending writ petition, we decline to accept that as a legitimate ground for denying extension of tenure to the appellant/petitioner. Such a justification offered by the respondents for declining to grant an extension to the appellant/petitioner as she had highlighted her need for leave due to her pregnancy and confinement would

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tantamount to penalizing a woman for electing to become a mother while still employed and thus pushing her into a choiceless situation as motherhood would be equated with loss of employment. This is violative of the basic principle of equality in the eyes of law. It would also tantamount to depriving her of the protection assured under Article 21 of the Constitution of India of her right to employment and protection of her reproductive rights as a woman. Such a consequence is therefore absolutely unacceptable and goes against the very grain of the equality principles enshrined in Articles 14 and 16.

18. Service law recognizes the principle of *'last come, must go first'*, other things being equal. In the present case, the appellant/petitioner was the Senior-most amongst the four ad-hoc Assistant Professors, i.e. Ms.Manisha Priyadarshini, (appellant/petitioner herein), Ms. Ipshita Nath, Dr. Vipin Singh Chauhan and Ms. Jyoti Kulshreshtha, who have been engaged by the respondents No.1 & 2/College, their initial appointment dates being 20.08.2014, 06.08.2015, 14.10.2015 and 07.09.2017 respectively, which were extended from time to time. It is thus apparent that the last one to be appointed was Ms. Jyoti Kulshreshtha. The ad-hoc appointments of the other three Assistant Professors, except for the appellant/petitioner herein, were lastly extended on 16.11.2019.

19. It is conceded by the respondents No.1 & 2/College that all the three ad-hoc Assistant Professors who are junior to the appellant/petitioner, reckoned by the date of their engagement with the respondents No.1 & 2/College, have been continued as ad-hoc Assistant Professors since July, 2019, till date. On this score also, the act of the respondents No.1 &

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2/College neither appears reasonable, nor justifiable assuming that non-availability of the appellant/petitioner on 27.03.2019, was the real reason for her non-extension, as she had clearly informed the respondents No.1 & 2/College of her availability on 24.05.2019. Moreover, the fact that the summer vacations were to commence soon thereafter, also does not appear to be a valid explanation since on two previous occasions, the respondents No.1 & 2/College had no hesitation in extending the tenure of the appellant/petitioner during the vacations, as is apparent from the details of her appointment reproduced in para (12) above.

20. Learned Senior Counsel appearing for the respondents No.1 & 2/College has relied on several judgments to contend that the appellant/petitioner had no vested right to such an appointment made on an ad-hoc basis. We may proceed to examine each one of them. Relying on the judgment in Executive Committee of Vaish Degree College, Shamli and Others v. Lakshmi Narain and Others, **(1976) 2 SCC 58**, it has been contended that a contract for employment cannot be specifically enforced. No doubt, that is the law. However, from the instances given in the said judgment, it is clear that where termination or dismissal is invalid, being contrary to the principles of natural justice or in violation of the provisions of a Statute, the question that would arise is not regarding enforcement of a contract of personal service, but would rather become one of enforcement of the right to protection against unlawful action.

21. The second judgment cited by the learned Senior Counsel is of this court, reported as Union of India and Anr. v. Satish Joshi, **ILR (2013) V Delhi 3504**. Once again, it was contended on the basis of the said judgment

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that a party to a contract has no right to claim that the contract with him be extendable, even if such a right is not afforded by the terms of the contract and the contract had come to an end. However, this judgment records that it is settled law that even in matters of contract, the State cannot act whimsically or capriciously, or in an arbitrary manner. Furthermore, the captioned case can be distinguished on facts, as in that case, the concerned authority decided not to recommend extension of employment on the basis of the performance of the employee. As noticed hereinabove, in the present case, no shadow has been cast on the capability/suitability of the appellant/petitioner for appointment as an ad-hoc Assistant Professor.

22. The third case relied upon on behalf of the respondents No.1 & 2/College is State of Maharashtra and Others v. Anita and Another, **(2016) 8 SCC 293**. Once again, the facts of the said case are vastly different from the instant case, in that, the issue there was whether the respondents were entitled to be appointed to permanent service and whether they would have to face the selection process. In the present case, the respondents No.1 & 2/College has already advertised for filling up the posts of Assistant Professors on a permanent basis and admittedly, the appellant/petitioner has also applied for such an appointment and would be participating in the selection process. It is not as if the appellant/petitioner is seeking any exemption from the rigours of the selection process. Thus, the said judgment is not relevant for a decision in the present case.

23. The last case relied upon by the learned Senior Counsel for the respondents No.1 & 2/College is Yogesh Mahajan v. Professor R.C.Deka, Director, All India Institute of Medical Sciences, **(2018) 3 SCC 218**. The

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issue raised there was, once again, in relation to appointment on a regular basis in view of the contractual services rendered by the employee, without adherence to the procedure for regular appointment. The Supreme Court noticed that though the petitioner before it could not show any Statutory or other right to have his contract extended beyond the tenure fixed under the contract, nevertheless, it accepted that he could have claimed that the authorities concerned should consider extending his contract and in the said case, due consideration was in fact given to his claim, but the respondent/All India Institute of Medical Sciences did not find it appropriate or necessary to continue his contractual services. In the instant case, there is not a whisper that extending the tenure of the appointment of the appellant/petitioner on an ad hoc basis, would be inappropriate. By their own action, the respondents No 1 &2/College have disclosed that there was a necessity for the appointment of ad-hoc professors as they have continued to engage ad-hoc Assistant Professors till date and have confirmed before us that they propose to do so till the vacant posts are filled up on completion of the selection process, which we are given to understand is likely to take some time, due to procedural rigmaroles.

24. In short, the judgments relied upon by learned Senior Counsel for the respondents No.1 & 2/College not only have no application to the facts of the present case, but rather go to establish the case of the appellant/petitioner that she had a right to be considered and could not be subjected to the whimsical and arbitrary decisions of the respondents when fundamentally, there was a need for the appointment of ad-hoc Assistant Professors and her performance has remained blemishless throughout.

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25. We may emphasise that in the present case, we are not concerned with the regular appointment of the appellant/petitioner to the post of Assistant Professor with the respondents No.1 & 2/College. Given the fact that process has already commenced and the appellant/petitioner would be entitled to participate therein, the judgments relied upon by the appellant/petitioner, namely, Rattan Lal and Others v. State of Haryana and Others, **(1985) 4 SCC 43**, State of Haryana and Others v. Piara Singh and Others, **(1992) 4 SCC 118** and Karnataka State Private college Stop-Gap Lecturers Association v. State of Karnataka and Others, **(1992) 2 SCC 29** may not be of any relevance here. However, the judgment in Om Prakash Goel v. Himachal Pradesh Tourism Development Corporation Ltd. Shimla and Another, **(1991) 3 SCC 291** is apposite. It would be useful to reproduce below, the observations made by the Supreme Court in the said case: -

> *"6. In this context, the learned counsel also questioned the termination order from another angle. In that order it is mentioned that the services of the petitioner are no longer required, therefore they are terminated. But from the record it is clear that juniors to the petitioner are retained and they are continuing in service. In the affidavit it is clearly mentioned that juniors whose names are given there are retained in service in violation of Articles 14 and 16 of the Constitution. In the counter-affidavit only a vague reply is given simply stating that the averments made by the petitioner are not correct.* ***In K.C. Joshi v. Union of India [(1985) 3 SCC 153 : 1985 SCC (L&S) 656 : (1985) 3 SCR 869]*** *it is observed that: (SCC p. 158, para 8) "If it is discharge simpliciter, it would be violative of Article 16 because a number of store-keepers junior to the appellant are shown to have been retained in the service". Likewise in* ***Jarnail Singh case [(1986) 3 SCC 277 :***

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1986 SCC (L&S) 524 : (1986) 1 ATC 208 : (1986) 2 SCR 1022] *it was observed as under: (SCC p. 292, para 35)*

> ***"In the instant case, ad hoc services of the appellants have been arbitrarily terminated as no longer required while the respondents have retained other Surveyors who are junior to the appellants. Therefore, on this ground also, the impugned order of termination of the services of the appellants are illegal and bad being in contravention of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India."***
>
> ***After a careful perusal of the record we are satisfied that the juniors to the petitioner are retained. Therefore on this ground also the termination order is liable to be quashed."***
>
> *(emphasis added)*

26. There is no denial in the instant case that juniors to the appellant/petitioner are still employed by the respondents No.1 & 2/College as ad-hoc Assistant Professors. Therefore, the action of dis-continuing with the services of the appellant/petitioner on the ground that her earlier contract stood terminated by efflux of time, is unacceptable. In GRIDCO Limited and Another v. Sadananda Doloi and Others, **(2011) 15 SCC 16**, the Supreme Court had referred to its earlier decision in Shrilekha Vidyarthi (Kumari) v. State of U.P., **(1991) 1 SCC 212** and held as below: -

> *"20. Even apart from the premise that the 'office' or 'post' of DGCs has a public element which alone is sufficient to attract the power of judicial review for testing validity of the impugned circular on the anvil of Article 14, we are also*

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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.****"*

(emphasis added)

27. An attempt was also made to urge that the respondents No.1 and 2/College is not a State and the matter was contractual. But there can be no dispute that colleges are run with an element of public interest and for public good. The following observation of the Supreme Court in GRIDCO Limited (supra) is an answer to the said submission: -

"28. Recognising the difference between public and private law activities of the State, this Court reasoned that unlike private individuals, the State while exercising its powers and discharging its functions, acts for public good and in public interest. ***Consequently every State action has an impact on the public interest which would in turn bring in the minimal***

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> ***requirements of public law obligations in the discharge of such functions.*** *The Court declared that to the extent, the challenge to State action is made on the ground of being arbitrary, unfair and unreasonable hence offensive to Article 14 of the Constitution, judicial review is permissible.* ***The fact that the dispute fell within the domain of contractual obligations did not, declared this Court, relieve the State of its obligation to comply with the basic requirements of Article 14.****"*
>
> *(emphasis added)*

28. It would be useful to once again revert back to the observations of the Supreme Court in Shrilekha Vidyarthi (supra) in this context, which are reproduced as under: -

> *"22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. 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***

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> ***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 of non-arbitrariness at the hands of the State in any of its actions.***"
>
> *(emphasis added)*

29. Thus, the Supreme Court has held in the above cases that where public interest is involved, the State would include instrumentalities of the State and the respondents herein cannot escape their obligations under Article 14 of the Constitution on such a specious plea. The doctrine of fairness has been developed in administrative law only to ensure that Rule of Law prevails and to prevent failure of justice where the action that is questioned, is administrative in nature. A duty has been cast on administrative bodies to act fairly and reasonably and to ensure fair action in discharging their functions.

30. While there is no doubt in our mind that ad-hoc employees cannot be exempt from the process of regular appointment only because of their legitimate employment on an ad-hoc basis and ordinarily, on termination of the contract, such contractual or ad-hoc employees have no right to insist on renewal of the contract, in circumstances where there is arbitrariness writ large, courts have not hesitated in extending protection to the aggrieved party. The validity of a termination order is subject to judicial review for the court to determine whether the action of the respondents was illegal, perverse, unreasonable, unfair or irrational. It is only when the action taken

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by the authority is not vitiated by such infirmities that the court would stay its hands. In the instant case, we find that unreasonableness, unfairness and irrationality is writ large in the action of the respondents No.1 & 2/College, inasmuch as they have continued with the services of others who are junior to the appellant/petitioner, on an ad-hoc basis and have deprived her of the benefit of further ad-hoc appointment, without any reasonable cause.

31. The only argument advanced by learned Senior Counsel for the respondents No.1 & 2/College was that the appellant/petitioner's ad-hoc employment had ceased on 18.03.2019 and therefore, she could not claim further service after such termination of contract by efflux of time and that in any case, she was unavailable for such ad-hoc employment. Neither of these reasons can withstand judicial scrutiny. The contracts of the others have been extended after their termination and the regular practice has been to give ad-hoc employees a break in service. That being the case, after expiry of the earlier contract on 18.03.2019, the appellant/petitioner was justified in reporting for duty on 20.03.2019. Such a reporting for duty cannot be taken as her disinclination to have a further tenure with the respondents No.1 & 2/College.

32. The second argument of her unavailability, is also not borne out from the record. The appellant/petitioner was in repeated communication with the respondents No.1 & 2/College, who, in turn, were in constant communication with the respondent No.3/University. On 27.03.2019, the respondents No.1 & 2/College had even asked the appellant/petitioner as to by when she could join her duty and in response, she had informed that she could join duty on 24.05.2019. Even if it was to be accepted that it was the

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last working day before the summer vacations, it has been conceded that the appointment of the other ad-hoc Assistant Professors was renewed from 26.05.2019 to 19.07.2019, on vacation salary and thereafter, from 20.07.2019 to 16.11.2019 as ad-hoc. In other words, when the appellant/petitioner had expressed her availability for engagement on 24.05.2019 and when on the following day, the others were actually appointed as ad-hoc employees, there was no good reason for the respondents No.1 & 2/College to have refused to engage her either on 26.05.2019 alongwith the others, or at the very least from 20.07.2019, when the others were reappointed. The plea that it was on account of non-availability of the appellant/petitioner to discharge her duties as an Assistant Professor, that the respondents No.1 & 2/College had not engaged her services on an ad-hoc basis, is completely unmerited and turned down.

33. In the light of the foregoing discussion, the impugned judgement is not sustainable and is accordingly set aside. We have no hesitation in quashing the termination order dated 29.05.2019, issued by the respondents No.1 & 2/College, who are directed to appoint the appellant/petitioner forthwith to the post of Assistant Professor in the English Department on an ad-hoc basis till such time that the vacant posts are filled up through regular appointment, a process that is already underway. The appointment letter shall be sent by email by the respondents No. 1 & 2/College within one week, upon receipt whereof, the appellant/petitioner shall report for duty immediately on the lockdown being eased/lifted or through e-mail/online, as may be directed by the respondents No.1 &2/College.

34. The appeal is allowed with costs of Rs.50,000/- (Rupees Fifty

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Thousand only) imposed on the respondents No.1 & 2/College to be paid to the appellant/petitioner within four weeks. The pending applications are disposed of.

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