

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

+ W.P.(C.) No. 5663/2000

% **Date of Decision: 11th NOVEMBER, 2009**

SHRI RAKESH SURI PETITIONER

Through: Mr. Daljinder Singh , Advocate.

VERSUS

\$ ENGINEERING PROJECT (INDIA) LTD. & ANR. RESPONDENTS

Through: Ms. C.M. Chopra, Sr. Advocate with
Ms. Maldeep Sidhu for respondent No. 1

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **NO**
2. To be referred to the reporter or not? **NO**
3. Whether the judgment should be reported in the Digest? **NO**

S.N.AGGARWAL, J (ORAL)

The petitioner was employed by the management of respondent No. 1 as Laboratory Assistant for its project at Kuwait vide appointment letter dated 25.09.1978 (Annexure 'A' at page 18 of the paper book). His appointment was valid till the completion of the project. Respondent No. 1 instead of posting the petitioner at Kuwait, vide letter dated 04.01.1979 (Annexure 'C' at page 22 of the paper book), posted him on its project in Iraq. There was no protest by the petitioner to his said posting in Iraq. His services were terminated by respondent No. 1 w.e.f. 18.12.1982. The petitioner was aggrieved by his termination and he had raised an industrial dispute which was referred by the appropriate Government in the Government of NCT of Delhi to the Labour Court for adjudication. The Labour Court has found the termination of the petitioner to be illegal and

has awarded him a compensation of Rs.2.5 lacs against the management for illegal termination of his services.

2 The petitioner, in this writ petition, is aggrieved by the amount of compensation awarded to him by the Labour Court. The learned counsel appearing on his behalf contends that the compensation of Rs.2.5 lacs awarded to the petitioner by the court below should be adequately enhanced by this Court.

3 Mr. Daljinder Singh learned counsel appearing on behalf of the petitioner has argued that the compensation to be awarded to the petitioner should be worked out on the basis of last drawn wages from the date of termination till the date of completion of project (s) on which he was employed in Iraq. Mr. Singh appearing on behalf of the petitioner has submitted that there were three projects of respondent No. 1 working in Iraq which according to him were not complete on the date respondent No. 1 terminated the services of the petitioner i.e. 18.12.1982. In view of this submission made by the counsel for the petitioner, the crucial question that arises for consideration is the date when the projects of respondent No. 1 in Iraq were completed. The onus of proof to prove the date of completion of projects in Iraq was upon the petitioner. It was for him to have pleaded and proved that the project (s) of respondent No. 1 in Iraq were not completed on the date of termination of his services i.e. on 18.12.1982 for supporting his claim for compensation on the basis of last drawn wages from the date of termination till the date of completion of projects. On being repeatedly asked, learned counsel appearing on behalf of the petitioner could not show the pleading in the statement of claim regarding date, month or year of closure of the project (s) of respondent No. 1 in Iraq. In para 17 of the affidavit filed by the petitioner in his evidence before the Labour Court (relevant portion is at page 67 of

the paper book) has stated that he was required at site in Iraq by respondent No. 1 for at least one year more from the date of termination of his services. If that was so, the petitioner could have claimed wages at the rate of last drawn wages for about one year more from the date of his termination. His counsel Mr Daljinder Singh has said that the last drawn wages of the petitioner at the time of termination of his services were Rs.5,000/- per month. Though Ms. Chander Mani Chopra learned senior counsel appearing on behalf of respondent No. 1 says that the last drawn wages of the petitioner were only Rs.3,500/- per month but even if this Court take the last drawn wages of the petitioner to be Rs.5,000/- per month as stated by his counsel, still the petitioner would have got only about Rs.60,000/- as wages for one year more beyond the date of his termination as he himself states in para 17 of the affidavit that he was required at site for about one year more after the date of termination. The petitioner has also stated in para 17 of the affidavit at page 67 of the paper book that he was also working at two other project (s) sites i.e. Talafar and Shirkat and according to him, these two projects were expected to be completed in another 2-3 years. Even if at best we take that the petitioner was entitled to continue in the service of respondent No. 1 for maximum of another three years as stated by him in para 17 of his evidence affidavit, he would have got wages of Rs.1,80,000/- in these three years calculated at the rate of his last drawn wages of Rs.5,000/- per month. As against this, maximum amount of Rs.1,80,000/- to which the petitioner might have been entitled on account of wages in three years beyond the date of his termination, had his services not been terminated illegally, the court below has awarded him compensation of Rs.2.5 lacs which by no means can be said to be inadequate, calling for an enhancement by this Court in exercise of its writ jurisdiction under

Article 226 of the Constitution. In the considered opinion of this Court, the compensation of Rs.2.5 lacs awarded by the court below in favour of the petitioner is very reasonable.

4 In view of what has been stated above, I do not find any merit in this writ petition which fails and is hereby dismissed with no order as to costs.

NOVEMBER 11, 2009
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S.N.AGGARWAL, J