

*** HIGH COURT OF DELHI: NEW DELHI**

+ CS (OS) No.891/2008

% Judgment decided on: 02.07.2012

K.L. Sehgal Plaintiff

Through: Mr. Sanjay Gupta, Adv. with
Ms. Shweta Shukla, Adv.

Versus

Escorts Heart Institute & Research Center Ltd & Ors Defendants

Through: Mr. Anshul Tyagi Adv with
Mr. Amandeep Bawa

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The plaintiff has filed a suit for recovery of Rs.20,38,766/- along with pendente lite and future interest @ 18% per annum.

2. Brief facts as per pleadings are that the plaintiff was appointed as an Executive Secretary to Dr. Naresh Trehan, who was the Executive Director with defendant No.1-company on retainership basis by letter dated 16th July, 1999 on a retainer fee of Rs.40,000/- per month. In terms of the Agreement of retainer, the plaintiff was required to coordinate various activities and was to take instructions from the Executive Director or whomsoever he designates.

3. The said retainer fee was enhanced from time to time, the details are given as under:-

- a) The retainer fee of the plaintiff was enhanced by defendant No.1 to Rs.44,000/- per month by letter dated

18th August, 2000.

- b) It was further enhanced to Rs.48,500/- vide letter dated 23rd June, 2001. In addition, the plaintiff was further rewarded with an allowance/benefit of Rs.1,80,000/- per annum vide letter dated 23rd June, 2001. The retainer fee was further enhanced to Rs.54,000/- on 19th September, 2002 and Rs.60,000/- on 6th March, 2004. The allowance/benefit was further increased to Rs.2,00,000/- per annum vide letter dated 6th March, 2004. Certain conditions were also enumerated in the letter of appointment dated 19th September, 2002, as defendant No.1 also agreed to pay commission of Rs.2,65,000/- in addition to the retainer fee vide letter dated 22nd September, 2005.
- c) On 28th March, 2007, defendant No.1 was again to extend the retainership of the plaintiff from 1st April, 2007 to 31st March, 2008. Besides increasing the monthly retainer fee to Rs.90,000/-, the commission was also increased to Rs.3,87,000/- per annum. The letter specifically mentioned that the retainership fee was in pursuance to the terms and conditions laid down in letter dated 19th September, 2002. The defendant No.1 further revised the offer by its letter dated 15th May, 2007 whereby the commission was enhanced to Rs.5,67,000/- per annum. The rest of the terms and conditions were as per the letter dated 19th September, 2002.

4. The plaintiff received a letter dated 18th May, 2007

terminating the arrangement with the plaintiff with immediate effect.

5. It is the case of the plaintiff that the said action of the defendants was unilateral and illegal in terminating the services of the plaintiff without any reason and was in violation of the letters dated 28th March, 2007 and 15th May, 2007. The plaintiff thereafter sent a legal notice dated 30.06.2007 issued to defendant No.1 claiming the retainership fee payable from 1st April, 2007 to 31st March, 2008 alongwith the commission and other dues. In the meanwhile, the defendant No.1 by its letter dated 21st May, 2007 provided the statement of full and final dues and vide letter dated 22nd May, 2007 sent two cheques bearing No.289441 dated 3rd May, 2007 and bearing No.289441 dated 3rd May, 2007 and bearing 289459 dated 21st May, 2007 for Rs.1,29,580/- and Rs.6,07,508/- respectively i.e. the amount due to the plaintiff towards his outstanding dues upto 18th May, 2007 and other dues covering payment of 162 days earned leaves without taking into consideration amount of commission. The said payments were received by the plaintiff under protest and without prejudice to his rights under the retainership arrangement as per the case of the plaintiff.

6. The plaintiff thereupon sent another letter dated 17th November, 2007 demanded his outstanding payment for the unexpired period of retainership from 19th May, 2007 to 31st March, 2008. As the defendant failed to pay the said amount of Rs.20,38,766/- i.e. liquidate its liability, hence the plaintiff has filed the suit for recovery of the said amount.

7. The defendants filed their written statement wherein they stated that the plaintiff by way of this suit is seeking to enforce the

contract which was between the plaintiff and defendant No.1, moreover, the termination letter was issued by defendant No.1 and not them and there is also no privity of contract between the defendant Nos.2 to 4 and the plaintiff. The only reason given in the plaint for impleading them as defendants is that they are in control of defendant No.1 Company however, at the relevant time i.e. 18th May, 2007, the defendant No.3 was not an Executive Director but, was a doctor in Cardiology department and was not holding any administrative post, defendant No.4 was not even in the employment of defendant No.1 when the contract of the plaintiff was determined and as for defendant No.2 who was a director, it is stated that the defendant No.1 is a Company and a director cannot be held liable.

8. In the written statement, it is stated that the plaintiff was appointed on retainership basis as an Executive Secretary to Dr. Naresh Trehan, the Executive Director of defendant No.1 vide letter dated 16th July, 1999 the said contract was between the plaintiff and defendant No.1. He was not an employee of the defendant and was only on retainership basis for which the contract was renewed every year for a period of one year and in fact, it was clearly “contract of personal service”. Thereafter, in or around September 2005, M/s Fortis Healthcare Ltd. purchased the shares of defendant No.1 Company and defendant No.2 was appointed as the Managing Director of defendant No.1, during his tenure with defendant No.1, the plaintiff was assisting Dr. Tehran in his personal private venture of setting up his private Hospital which was detrimental to the interest of defendant No.1. Thus on 18th May, 2007, the contract of Dr. Naresh Trehan, plaintiff and few others was determined.

9. Thereafter, on 19th May, 2007, the plaintiff and other such employees whose contracts had been terminated, made forcible entry with some unknown miscreants pursuant to which, the defendant No.1 had lodged an FIR being No.240 dated 22nd May, 2007. But, later on, the disputes between plaintiff and defendant No.1 stood resolved amicably. A joint petition was move by defendant No.1 and plaintiff for quashing the said FIR. All the allegations between the defendants and the plaintiff and other co-petitioners stood settled and the same is evident from the order dated 3rd July, 2007 passed in W.P. (Crl) No.764 of 2007. Hence, any claims made in furtherance of the said order would be out of scope.

10. In terms of the settlement, the defendants sent a cheque amount of Rs.7,37,088/- towards full and final settlement to the plaintiff and the same was encashed. However, three months thereafter, plaintiff came up with this frivolous suit.

11. From the pleadings by order dated 27th April, 2009, the following issues were framed:

- i) Whether the defendant was not entitled to terminate the Retainership Agreement with the plaintiff and if so, to what amount, if any, is the plaintiff entitled to from the defendant for the wrongful termination of the Retainership Agreement? OPP
- ii) Whether the disputes between the plaintiff and the defendant stood finally settled as stated in the written statement and whether the present suit is not maintainable for the said reason? OPD
- iii) If the issue no.1 is decided in favour of the plaintiff, whether the plaintiff is entitled to any interest and if so at what rate and for what period? OPD
- iv) Relief.

12. The plaintiff tendered his own affidavit as evidence dated 19th November, 2011 (PW-1/A) and was cross-examined by the defendants' counsel. During his evidence, plaintiff proved following letters:

- (i) Letter dated 16th July, 1999 from the defendant to the plaintiff whereby the plaintiff was retained in the services of the defendant on the terms and conditions contained in the said letter. Ex. PW- 1/1 (marked as Ex.P1) during admission/denial of the documents conducted on 20th July, 2009).
- (ii) Letter dated 18th August, 2000 from the defendant to the plaintiff (Ex. PW-1/2) whereby the retainership of the plaintiff was increased to Rs.44,000/-. In addition to the Retainership Fee of Rs.44,000/-, the plaintiff was also entitled to a fixed commission of Rs.1,55,000/- per annum.
- (iii) Letter dated 23rd June, 2001 from defendant to the plaintiff whereby the retainership agreement was extended by another one year with effect from 1st April, 2001 to 31st March, 2002 and the Retainership Fee was also increased to Rs.48,500/- and the commission was increased to Rs.1,70,000/- (Ex. PW-1/3).
- (iv) Letter dated 19th September, 2002 from defendant to the plaintiff whereby the retainership agreement was extended from 1st April, 2002 to 31st March, 2003. The commission was also increased to Rs.1,80,000/- (Ex. PW-1/4).

- (v) Letter dated 6th March, 2004 – extension of the retainership from 1st April, 2003 to 31st March, 2004. The terms and conditions contained in the letter dated 19th September, 2002 remained valid (Ex. PW1/5).
- (vi) Letter dated 22nd September, 2005 – extension of the retainership from 1st April, 2005 to 31st March, 2006. The terms and conditions contained in the letter dated 19th September, 2002 remained unchanged. (Ex. RW-1/6)
- (vii) Letter dated 28th March, 2007 – extension of retainership from 1st April, 2007 to 31st March, 2008. It is pertinent to mention that vide said letter alongwith the retainership fee, the commission was also increased to Rs.3,87,000/-. All other terms and conditions contained in the letter dated 19th September, 2002 remained unchanged. (Ex. PW-1/7)
- (viii) Letter dated 15th May, 2007 – vide said letter the defendant revised the commission from Rs.3,87,000/- to Rs.5,67,000/- per annum (Ex. PW-1/8).
- (ix) Letter dated 18th May, 2007 from the defendant terminating the retainership arrangement of the plaintiff with effect from 18th May, 2007 (Ex. PW-1/9).
- (x) Letter dated 18th May, 2007 from the defendant. (Ex. PW-1/10)
- (xi) Letter dated 21st May, 2007 from defendant to the plaintiff enclosing the alleged calculations towards the outstanding payments payable to the plaintiff (Ex. PW-

1/11).

- (xii) Letter dated 22nd May, 2007 from defendant to the plaintiff enclosing two cheques bearing No.289441 dated 3rd May, 2007 and bearing No.289459 dated 21st May, 2007 for Rs.1,29,580/- and Rs.6,07,508/- respectively. (Ex. PW-1/12)
- (xiii) Legal notice dated 30th June, 2007 from the plaintiff to the defendant (Mark "A"). It is pertinent to mention that Mr. J.S. Puri (DW-1) while deposing on 25th November, 2010 has admitted the said document in his cross-examination and the same therefore stands proved.
- (xiv) Letter dated 8th September, 2007 from the plaintiff to the defendant (Mark "B") (Ex. PW-1/DX: Cross-Examination of plaintiff on 8th February, 2010) whereby plaintiff called upon the defendant to make the balance payment of unexpired period of retainership i.e. from 19th May, 2007 till 31st March, 2008 alongwith the short difference of payment on account of leave encashment. It is worth mentioning that the said document also stood proved during the cross-examination of Mr. J.S. Puri on 25th November, 2010.
- (xv) Letter dated 17th November, 2007 from the plaintiff to defendant (Mark "C"). Vide said letter also, the plaintiff demanded the balance payment for the unexpired period.

13. Defendant No.1 tendered evidence of Sh. J.S. Puri, Vice President, Corporate Affairs of DW-1 by way of affidavit which is

exhibited as **Ex.DW-1/A**. The following documents were exhibited in his affidavit:

- (i) The copy of the letter dated 16th July, 1999 exhibited as **Ex. DW-1/1**.
- (ii) A copy of the complaint dated 19th May, 2007 filed by the defendant No.1 at New Friends Colony Police Station exhibited as **Ex. DW-1/2**.
- (iii) A copy of the FIR No.240 filed on 22nd May, 2007 against the plaintiff and others, exhibited as **Ex. DW-1/3**.
- (iv) A copy of the letter dated 22nd May, 2007 exhibited as **Ex. DW-1/4**.
- (v) A copy of the order dated 3rd May, 2007 exhibited as **Ex. DW-1/5**.

14. I have heard the learned counsels appearing on behalf of both the parties. Let me first deal with issue No.2 which reads as under:-

- “ii. Whether the disputes between the plaintiff and the defendant stood finally settled as stated in the written statement and whether the present suit is not maintainable for the said reason? OPD”

Onus of proof and burden of issue No.2 was put upon the defendants. Defendant No.1 had taken the defence in the written statement that the plaintiff is not entitled for any relief in view of the settlement recorded by this court vide order dated 3rd July, 2007 in writ petition (Crl.) No.764/2007.

15. It is submitted by the defendants that the plaintiff had resolved all issues and ‘claims’ including that of his termination on

18th May, 2007 resulting in the incident on 19th May, 2007 by having the FIR quashed pursuant to the joint petition having been filed for the same. The plaintiff was therefore, not entitled to file the present suit, in view of matter having resolved all the issues in connection with his termination by the defendant. Even otherwise and without prejudice, the plaintiff reached full and final settlement by encashing cheques issued by defendant towards his final settlement. The Supreme Court in the case of **Nathani Steel Ltd. vs. Associated Construction**, reported in *1995 Supp (3) SCC 324* held that after a settlement is reached, a party cannot raise further claims.

16. The plaintiff has denied the suggestion of the defendants during the cross-examination regarding the settlement of the plaintiff's dues. In this regard, following cross-examination of the plaintiff held on 8th February, 2010 is relevant:

“Q. You had filed a joint petition under Section 482 Cr.P.C. where you had acknowledged that your service stood terminated on 18.05.2007, the certified copy of which is placed on the record? (At this stage, the certified copy of said petition is shown to the witness).

Ans. It is correct. (Vol. It was illegal termination on the part of the defendant, that petition was filed to the High Court by the defendant to quash an FIR lodged with the police due to some misunderstanding on their part and that FIR has no relevance or meaning in any manner to the present case. I did not receive in any termination notice or letter from the defendant at that time). The certified copy of petition under Section 482 Cr.P.C. is now marked as Ex.PW1/DX1”

17. Perusal of the records in respect of W.P.(Crl.) No.764 of 2007 show that the present dispute was never the part of the settlement held in the said proceedings. The relevant cross-examination of the Plaintiff held on 26th February, 2010 is referred to

as under:

“Q. Did you instruct your counsel to submit before the Hon’ble Court that your dispute pertaining to your termination and payment had not been settled?

Ans. Since the petition is dated 29.05.2007, the dispute of dues came only after the receipt of cheques which was covering part payment of my salary up to 18.05.2007, which were received in the month of August and encashed in early part of September, 2007. There was no occasion of giving instruction to my counsel regarding claim of my legitimate dues.”

18. The argument of the defendant No.1 with regard to the settlement of the claims of the plaintiff is also fortified from the fact that the defendant No.1 in its reply dated 14th August, 2007 (i.e. post alleged settlement on 3rd July, 2007) to legal notice dated 30th June, 2007 did not dispute the entitlement of the plaintiff on the ground of the settlement. There is no whisper in the reply dated 14th August, 2007 that the plaintiff is not entitled for the amounts claimed for the reason that the same stood settled in W.P.(CrI). No.764 of 2007.

On perusal of the order dated 3rd July, 2007 and the affidavit filed by the plaintiff shows that the settlement was only in respect of an FIR No.240/2007 and the claims of the plaintiff on account of illegal termination of his contract was never the subject matter of the said writ petition. No where it was stated that in the compromise arrived between the parties that the claim of the plaintiff for remaining unexpired period of retainership period of 10th May, 2007 to 31st March, 2008 is also satisfied.

19. In view of above, the defendant No.1 was not able to discharge its onus of proof on issue No.2 that the plaintiff and defendants had amicably resolved the disputes left with each other

after quashing of FIR No.240/2007 dated 22nd May, 2007 and the joint petition filed by them in this Court. Thus, issue No.2 is decided against the defendants.

ISSUE NO.1:

“i. Whether the defendant was not entitled to terminate the Retainership Agreement with the plaintiff and if so, to what amount, if any, is the plaintiff entitled to from the defendant for the wrongful termination of the Retainership Agreement? OPP”

20. It is submitted by the plaintiff that the parties i.e., the plaintiff and the defendant No.1 were at ad idem that the contract between the parties will be a fixed period contract and the same will not be terminated before the expiry of the contract period. The defendant No.1 while terminating the contract has assigned no reasons whatsoever. It is submitted that in the absence of the termination clause in the contract dated 15th May, 2007, the same could not have been terminated. No reply to letter dated 17th November, 2009 and 8th September, 2007 was given by the defendants.

21. The plaintiff has also proved the amounts which he was getting while working with the defendant. Following cross-examination held on 8th December, 2009 is relevant.

“Q. It is correct that you were getting only the consolidated/fixed amount every month from the defendant?

Ans. On yearly basis I was getting the salary as other employees were getting and my increments were done in the same manner as was done for the other employees. I was also getting the commission as other employees were getting and there was no differentiation between me and

other employees as far as salary and commission is concerned.

Q. I again put it to you that you were getting only a fixed amount which will not vary from month to month and the commission was also fixed as a consolidated amount in the beginning of every year?

Ans. It is correct.”

22. The case of the plaintiff is that the contract between the plaintiff and the defendant was a fixed period contract and therefore, could not have been terminated before the expiry of the contract period i.e. 31st March, 2008. The plaintiff in his affidavit of evidence had stated that in view of illegal termination of the contract, the plaintiff was deprived of his livelihood and suffered a blow to his public image. The plaintiff was able to join another company only after 31st March, 2008. In the replication filed by the plaintiff to the written statement of the defendant No.1, the relevant extract is reproduced herein below:

“1. The contents of para 1 are wrong and therefore denied vehemently It is further submitted that the plaintiff started working with Global Health Pvt. Ltd. only after 31.03.2008”

23. On behalf of defendant No.1, Mr. J.S. Puri (DW-1) appeared as a witness. The defendant did not give any evidence to controvert the evidence of the plaintiff, rather the said witness (DW-1) pleaded ignorance regarding the increments given to the plaintiff on account of his good performance. In this regard, the cross-examination of Mr. Puri held on 25th November, 2010 is referred to herein below:-

“Q. Mr. Sehgal since the year 1999 had been regularly getting increments on account of his good performance. Is it correct?

Ans. I will have to refer to his personal file.”

24. Even during the cross examination, the plaintiff stated to the following effect:

“Q. Where are you working nowadays?

Ans. At the moment I am working in Global Health Pvt. Ltd., Sector 38, Gurgaon since 01.04.2008 as Associate Vice President.”

Neither any question not any suggestion was put to the plaintiff controverting the facts stated by the Plaintiff in his evidence. It is a well settled proposition of law that if no cross examination is put to the witness challenging the veracity of his statements, the same shall deemed to have been admitted. The plaintiff was able to discharge his onus of proof and the burden shifted on the defendant No.1. The Defendant No.1 failed to produce any record or material to controvert the above position. Thus, issue No.1 is decided in favour of the plaintiff and against the defendant No.1.

25. It is submitted by the defendant that the plaintiff vide the suit is seeking to specifically enforce the contract of personal service which is not permissible in law as the plaintiff was admittedly not an employee of the defendant and was on a retainership basis for which the contract was renewed every year for a period of one year. It was therefore clearly ‘contract of personal service.’

26. It is argued by the learned counsel appearing on behalf of defendants that the plaintiff is demanding the amount from the period of the retainership contract which was renewed from 1st April, 2007 to 31st March, 2008 with retainer of Rs.90,000/- per month and commission of Rs.3,87,000/- per annum which was increased to

Rs.5,67,000/- per annum as the defendant could not have terminated the retainership contract on 18th May, 2007, i.e. the entire amount for the contractual period, the entire retainership fee as if the arrangement had continued till 31st March, 2008, hence even, as per the case of the plaintiff himself he is seeking to enforce the contract of personal services which is not permissible under law.

27. The learned counsel for the defendants has referred the case of Supreme Court in **State Bank of India and other vs. S.N. Goyal**, reported in (2008) 8 SCC 92, *relevant para-17*, wherein it was held that contract of personal service cannot be specifically enforced. And it was argued that even if the termination of the contract of the employment is found to be illegal, the remedy of the employee is only to seek damages and not specific performance of contract.

His argument is that the contract did not envisage any mode of termination or 'notice period' for the same and therefore the services could be terminated by the defendant. There was therefore no violation by the defendant. Even otherwise as per the Supreme Court's judgment, even if the termination is held to be illegal, the plaintiff would be entitled to only damages which he would have to 'prove' in evidence as per law. He further argued that in the present case, assuming for the sake of arguments that the termination was illegal the plaintiff could have only filed the case for damages suffered by it. The perusal of pleading and the evidence on record clearly shows that there is no whisper of any damage being suffered by the plaintiff and since it is not even the pleaded case of the plaintiff that he suffered any damages, therefore, the plaintiff is not entitled to the reliefs which are in the nature of specific enforcement of contract of personal services.

28. In the present case, admittedly, the plaintiff has not filed the suit for specific performance of the contract, for re-instatement of his service as per contract but has filed the suit for recovery of the amount demanded by him for remaining unexpired period of retainership contract from 19th May, 2007 to 31st March, 2008 as compensation for wrongful termination of the contract. The case of the plaintiff is that his services were terminated without any reasons. The defendants have not pleaded or proved their case otherwise the defendants are liable to pay all the outstanding amount. The plaintiff, in his cross-examination, has stated that he was working in a new company since 1st April, 2008, i.e. after the expiry of contracted period up to 31st March, 2008. The defendants were not able to prove that the plaintiff was working anywhere between the unexpired period, i.e. from 19th May, 2007 to 31st March, 2008.

29. It has been held by Courts in a catena of judgments that duration of an employment contract may be of one of the three kinds:

(1) A contract for an indefinite period that duration of which is determined only when it is brought, to an end by a notice of reasonable period. The length of notice would depend on the nature of the contract, the status of the employee and other circumstances.

(2) A contract for a definite period binding both the parties to the master and servant relationship till the end of that period. This can be terminated only for a cause of justification such as misconduct or inefficiency.

(3) A contract for a period stated and yet terminable by a notice of a reasonable period.

30. It is case at hand, the case falls in the second and/or third category and thus the termination of the contract of employment of plaintiff by the defendant before the expiry of the stated duration of one year amounted to breach of the term of fixed period contract that

too without any notice in advance. The basis on which the damages for the breach are to be calculated is well settled.

The Supreme Court in *S.S. Shetty v. Bharat Nidhi Ltd.*, **1958 SCR 442** after referring to the statement of law in Chitty on Contracts, referred to above at page-453 as follows:

“If the contract of employment is for a specific term, the servant would in that event be entitled to damages the amount of which would be measured prima facie and subject to the rule of mitigation in the salary of which the master had deprived him. (vide *Collier v. Sunday Referee Publishing Co. Ltd.* [1940] 4 All E.R. 237. The servant would then be entitled to the whole of the salary, benefits, etc., which he would have earned had he continued in the employment of the master for the full term of the contract, subject of course to mitigation of damages by way of seeking alternative employment.”

31. In Sarkar on the Law of Master and Servant (1939 edn.) at page 243, it is stated that “in actions for wrongful dismissal, the general rule is that the plaintiff may recover damages for the whole unexpired period of service”, except in cases where it is provided that the agreement might be terminated at an earlier date by giving previous notice.

32. In the case of *Sundaram v. Chokalingam*, reported in **AIR 1938 Madras 672**, the contract of employment was for a fixed term of three years and was terminated before the expiry of that period, and it was laid down by a Division Bench of the Madras High Court at page 674 that, where the employment was bound to pay the stipulated salary for the full period, unless he showed that the discharged servant had an opportunity of other employment but refused to avail himself of it, and that as it had not been shown that

the appellant could have obtained other employment, he was entitled to payment from the date of wrongful termination of his service till the expiry of the full period of three years. This decision of the Madras High Court has been followed by Hidayatullah C.J. in case of **Trimbak Gopal Panchabhai v. Akola Education Society**, reported in **AIR 1957 MP 144**, in which also the employment was for a fixed term viz. from 15th June, 1950 to 31st March, 1951, and it was held that it could not be terminated before the expiry of that period, unless the employee was at fault, and that where the employment was for a definite period, the employer was bound to pay the stipulated salary, unless he showed that the discharge servant had an opportunity of other employment, but refused to avail himself of it. The same proposition in regard to the measure of damages for the wrongful dismissal of an employee for a fixed term is to be found in standard works on the subject.

33. In Mayne on Damages (12th Edn.) Para 608, it is stated that the plaintiff would have earned had the employment continued according to the contract, subject to a deduction in respect of any amount which the plaintiff in minimizing damages either had obtained or should reasonably have obtained. The learned author, however, proceeds to point out that whereas in the case of sale of goods the general rule in regard to measure of damages is the difference between the contract price and the market price at the date of the breach, in the case of the breach of a contract for wrongful dismissal prima facie the measure of damages is the contract price, which is all that the plaintiff needs to show, subject to mitigation by the plaintiff, the onus of showing that the plaintiff, has or should have obtained alternative employment being on the defendant. It is further

stated (para 609) that basically, the amount that the plaintiff would have earned under the contract is the salary of the wages which the defendant had agreed to pay.

34. In Chitty on Contracts (22nd Edn.) Vol, 2, para 1141, the rule is formulated in the same terms.

In Halsbury's Laws of England (3rd edn.) Vol. 11, p. 244 para 414, it is stated in somewhat more specific terms that the measure of damages for wrongful dismissal, is the loss thereby incurred, and that would, subject to the duty of the plaintiff to mitigate, normally be the wages due and payable for the agreed period of service.

35. The plaintiff, therefore, proved his case of wrongful termination of the retainerhip with effect from 18.05.2007 and he was entitled for the dues for the said unexpired period, as the defendants were not entitled to terminate the retainerhip agreement with the plaintiff. The plaintiff has discharged his onus. However, this court is of the considered view that the suit against only defendant No.1 is maintainable.

36. The total outstanding payments are claimed by the plaintiff, the details of which are mentioned herein below:-

- Rs.16,47,000/- + 180 days earned leave (2007-2008 amounting to Rs.8,23,500/- plus Service Tax @ 12.36 (Rs.3,05,353) total amount of Rs.27,75,854 minus Rs.7,37,088 (already paid to plaintiff)
- Hence the total outstanding due to plaintiff is Rs.20,38,766/- along with pendente lite and further interest on outstanding

amount @18% p.a. from due date upto the date of payment in full.

37. The monthly retainership was Rs.90,000/-. He was not entitled to any earned leave etc. as claimed by him which is evident from the perusal of the retainership contract and also as admittedly he was not an employee of the defendant. He was also not entitled to any service tax also as claimed which is also evident from the perusal of the retainership contract.

38. In view of my findings arrived in issues No.1 & 2 in favour of the plaintiff, consequently, issue No.3 is also decided in favour of the plaintiff and against defendant No.1. The suit is of the plaintiff is decreed in his favour and against the defendant No.1. Suit against the other defendants is dismissed. The plaintiff is entitled for a decree for a sum of Rs.16,47,000/- as total outstanding and further interest @9% per annum only as the interest claimed by the plaintiff is on higher side as felt by this Court. The plaintiff would be entitled to interest from the date of filing of the suit till the date of payment. The plaintiff is also entitled for costs.

MANMOHAN SINGH, J.

JULY 02, 2012