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

% *Judgment delivered on: 27th August, 2012*

+ W.P.(C) 5271/2012

J.P.SINGH

..... Petitioner

Through: Mr. Apurb Lal, Ms. Kumari Alka and
Mr. Daleep Singh, Advs.

versus

GOVT.OF NCT OF DELHI AND ORS

..... Respondents

Through: Mr. Akshay Goel, Proxy Counsel for
Mr. Vinod Wadhwa, Adv. for R1.

Mr. Sandeep Prabhakar and Mr. Ravi Sharma,
Advs. for R2 & R3.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM. NO. 10768/2012

Exemption allowed subject to just exceptions.

CM disposed of.

+ **W.P.5271/2012**

1. Ld. Counsel appearing on behalf of the respondent on advance notice has informed this Court that the petitioner has claimed the same relief by filing a Civil Suit no. 35/2012 as under:-

“In pith and substance case pleaded by plaintiff is that he was appointed / posted on 1/6/1984 in DESU through U.P.S.C as a Class-I Officer but consequent upon restructuring of DVB services of plaintiff were transferred against his wishes to DISCOM-I known as BSES Yamuna Power Ltd. on 1/7/2002 in

terms of provisions of Delhi Electricity Reforms Act, 2000 and Tripartite Agreement executed between Govt. of NCT of Delhi, Vidyut Board and DVB Junior Engineers Association on 28/10/2000 which, inter-alia provided as under:-

“3) B) The terms and conditions of service upon transfer to the corporate entities, such as promotions, transfers, leave and other allowances, etc. regulated by existing regulations / service rules e.g. FR/SR will be guaranteed to continue the same and any modifications shall be by mutual negotiations and settlement with recognised unions / associations without decrement to the existing benefits.

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F) All benefits of the services rendered by the employees in the Board as on the date of restructuring i.e. the effective date shall be protected and shall be given full effect.

G) The period of the service of the employees under the Board and under the Corporate entity shall be treated as continuous service for the purposes of all service benefits and terminal benefits payable to the personnel.

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R) In the event of any dispute / difference arising out of this Tripartite Agreement efforts will be made to resolve amicably or through the Lt. Governor (Delhi) as an arbitrator or his nominee as appointed by him. Courts at Delhi / New Delhi shall have the jurisdiction in the event of any litigation.....”

In this background, case as pleaded by plaintiff is that despite transfer of his services to BSES / DISCOM-I w.e.f 01.07.2002, he still continues to be a government servant governed by FR / SR, CCS Conduct Rules and CCS (CCA) Rules, 1965 and thus a private person of BSES has no authority to exercise the powers of prosecuting the plaintiff departmentally. As submitted BSES / its Officers has no authority under CCS (CCA) Rules, 1965 to initiate departmental proceedings against plaintiff and in view of clause (R) of Tripartite Agreement dated 28/10/2000 only the Lt. Governor (Delhi) or his nominee can take such action against plaintiff. Also it is submitted on behalf of plaintiff that as per this very clause, courts at Delhi / New Delhi have jurisdiction in the event of any litigation and, as such, this Court has the jurisdiction to try the suit. Further it is submitted that as per clause (M) of this Tripartite Agreement only the disciplinary proceedings pending at the time of restructuring of DVB, are to be dealt with by successor entities like the plaintiff but not the future disciplinary proceedings as in this case.”

2. Vide order dated 15.03.2012, ld. Senior Civil Judge/Cum/RC (East) opined as under:-

Thus in view of above discussion it is concluded that w.e.f 1.7.2002 plaintiff ceased to be a public / government servant and became an employee of BSES Yamuna Power Ltd. & BSES Yamuna Power Ltd. being employer of plaintiff is authorized to take disciplinary action against plaintiff but BSES Yamuna Power Ltd. will be bound to give all the benefits to plaintiff which have been given to plaintiff by virtue of provisions of Delhi Electricity Reforms Act, 2001, Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 and Tripartite Agreements. What has been granted to plaintiff are the financial benefits and security of service etc. but not absolute immunity from disciplinary action at the hands of BSES Yamuna Power Ltd. who is employer of plaintiff w.e.f 1.7.2002. In my considered opinion, BSES Yamuna Power Ltd. is competent to take disciplinary action against plaintiff after following the procedure laid down CCS (CCA) Rules, 1965. Such powers, in

the facts and circumstances of this case, can be exercised without their being specific delegation of such powers by the authority which initially appointed the plaintiff. In fact, with the coming into operation of Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 all such powers with the initial appointing authority of plaintiff ceased to exist and they were acquired by BSES Yamuna Power Ltd. being the new employer of the plaintiff but keeping the service benefits / conditions at par as they existed at the time when plaintiff was employed with DESU/DVB. DVB ceased to exist w.e.f 1.07.2002.

In view of clause 3) L) of Tripartite Agreement executed on 28/10/2000, it cannot be said that there exist no contract of service between plaintiff and BSES Yamuna Power Ltd. In fact there exist contract of personal service between plaintiff and BSES Yamuna Power Ltd. A contract of personal service includes all matters relating to the service of employee e.g. confirmation, suspension, transfer, termination etc. By the relief as are sought by plaintiff in this suit, plaintiff is seeking enforcement of a contract of personal service and Civil Court has no jurisdiction to grant such reliefs as held by Hon'ble Supreme Court of India in case law report as Pearlite Lioners (P) Ltd. v. Manorama Sirsi (Supra).

An injunction against holding a departmental enquiry in the facts of this case would clearly amount to imposing an employee on an employer or to enforcement of a contract of personal service, which is not permissible under the law. However plaintiff can raise his grievances against the disciplinary proceedings, if at the end of the enquiry he is found guilty and awarded punishment, through suit of appropriate nature or other legal proceedings available to him either under the service rules or otherwise. In view of above detailed discussion, reliefs as prayed for by plaintiff in the suit or application u/o 39 Rule 1 & 2 r/w S. 151 CPC cannot be granted to him as the same are barred under the provisions of S. 14 and 41 of Specific Relief Act, 1963. As such, plaint merits rejection and application of plaintiff u/o XXXIX Rule 1 & 2 r/w S. 151 CPC is liable to be dismissed. Ordered accordingly.

Applicants stands disposed off accordingly. Parties to bear their own cost. File be consigned to RR.

3. Petitioner being aggrieved challenged the aforesaid order vide RCA No. 45/2012, wherein application for stay of the operation of the suspension order, extension of suspension and enquiry proceedings initiated against the petitioner was dismissed vide order dated 04.08.2012 and the main matter is pending before the Id. Addl. District Judge, East.

4. In view of the above, I am of the opinion that instant petition is not maintainable and dismissed as such with no order as to cost.

CM. NO. 10767/2012 (Stay)

Since the main petition is dismissed, instant application become infructuous and disposed of as such.

SURESH KAIT, J

AUGUST 27, 2012

Jg