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

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Date of Decision: October 12, 2012

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RFA(OS) 106/2011

M.G. KATYAL

..... Appellant

Represented by: Mr.J.P.Sengh, Senior Advocate
instructed by Mr.Gaurav Bhardwaj, and Mr.Sumeet
Batra, Advocates.

versus

D.A.V. COLLEGE TRUST AND
MANAGEMENT SOCIETY & ORS.

..... Respondents

Represented by: Mr.Ravi Gupta, Senior Advocate
instructed by Ms.Rakhi Ray, and Mr.S.S.Ray, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J. (Oral)

1. Appellant had instituted a suit praying for a decree for declaration and damages by resting the cause on the fact that he was a life member of DAV College Trust and Management Society with effect from January 15, 1990 and that the regulations of the Trust enjoined upon the trust to permit him to serve till July 12, 2012 and needless to state at a salary.

2. Alleging illegal termination and praying that the same be declared to be illegal, appellant claimed damages; being the salary which he would have earned till he would have superannuated.

3. Six issues were settled on the pleadings of the parties as under:-

“(i) Whether the plaintiff is entitled to a decree of declaration declaring the order dated 12.10.2006 passed by the defendant is illegal, as claimed in prayer (i)? OPP

(ii) Whether the plaintiff is entitled to claim a sum of ₹18,72,740/- from the defendants on account of damages, as claimed in prayer (ii)? OPP

(iii) Whether the plaintiff is entitled to claim a sum of ₹34,31,465/- from the defendant on account of arrears of salaries for the period during which the plaintiff was under suspension, as claimed in prayer (iii)? OPP

(iv) Whether the plaintiff is entitled to any interest from the defendant, and if so, on what amount, for which period and at what rate? OPP

(v) Whether the employment of the plaintiff was contractual in nature and, if so, the effect thereof? OPD

(vi) Relief.”

4. Vide impugned decision dated July 08, 2011, the learned Single Judge has decided the matter pertaining to issues No.(i) and (v), with reference to Ex.D-1, the letter offering appointment to the appellant in the year 1980 as a temporary Lecturer. It is after reflecting upon Ex.D-1 that the learned Single Judge, taking into account the termination letter Ex.P-1, has concluded that the employment (being a contract on terms as per Ex.D-1) entitled the first respondent to terminate the services vide Ex.P-1 as long as condition No.3 of the rules of the DAV College Managing Committee were complied with.

5. The learned Single Judge has also observed, with respect to the

two issues, that since consequential relief of reinstatement was not sought; relief simpliciter pertaining to declaration would be prohibited as per Section 34 of the Specific Relief Act.

6. There is an apparent wrong approach by the learned Single Judge in commencing discussion on the two issues.

7. Firstly, the suit was premised i.e. the foundation of the cause of action was appellant's status being that of a life member of the defendant No.1/respondent No.1 society with effect from January 15, 1990.

8. Thus, the learned Single Judge ought to have started the discussion with reference to said status being asserted by the appellant and the relatable evidence thereto.

9. Thereafter, the learned Single Judge was obliged to consider the regulations/rules of the DAV College Trust and Management Society, for the reason, reliance upon said regulations/rules was an integral part of the cause of action pleaded by the appellant and the defence.

10. Learned counsel for the parties concede that neither the appellant nor the respondents led any evidence pertaining to the relevant regulations/rules of Dayanand Anglo-Vedic College Trust and Management Society on which the two had respectively relied upon.

11. What has happened is that the learned Judge was handed over, during arguments, some rules by the respondents containing a reference to the employees and not the regular life members, made to serve and required to be paid wages.

12. As regards the view taken by the learned Single Judge that in the absence of relief of reinstatement in service being sought the suit for declaration simpliciter was not maintainable, we hold that the view taken is

incorrect, for the reason in private employment no reinstatement can be directed by the Court. Damages for wrongful termination of services is the appropriate remedy; which relief has been claimed by the appellant.

13. Accordingly, we set aside the impugned judgment and decree dated July 08, 2011 and restore CS(OS) No.1080/2007 for fresh adjudication by the learned Single Judge.

14. To obviate any dispute to the identity of the applicable regulations/rules we take on record the regulations printed by the first respondent in the year 2004. We exhibit the same as Ex.A-1. We also take on record the rules of the first respondent on which the respondent relies and exhibit the same as Ex.A-2. Signatures of learned counsel for the parties have been taken on both the exhibits so that the identity of the two exhibits would not be disputed.

15. Learned counsel for the parties state that no evidence would be required to be led and that the suit would be argued with reference to the existing evidence as also Ex.A-1 and Ex.A-2 notwithstanding the two documents neither being filed nor proved at the trial.

16. Learned counsel for the parties would move a joint application seeking date to be fixed before the learned Single Judge.

17. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

OCTOBER 12, 2012

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