

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

% *Order delivered on: December 17, 2013*

+ **C.R.P. 58/2012 & CM No.7881/2012**

DIRECTOR INDIAN INSTITUTE OF TECHNOLOGY DELHI

..... Petitioner

Through Mr.Arjun Mitra, Adv.

versus

SUBRAMANIAN SWAMY

..... Respondent

Through Dr.Roxna S. Swamy, Adv. with
Mr.Ishkaran Singh Bhandari, and
Ms.Supriya Manan, Advs. with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. Brief facts are :

a) The plaintiff who is respondent herein has filed the suit seeking recovery of salary and allowances in revised grade from 12th December, 1972 the date of illegal termination till 21st May, 1991 the date of acceptance of resignation by the defendant alongwith interest @ 18% per annum, w.e.f. 20th February, 1991 till the date of payment of pension and gratuity to be paid as per today against the defendant.

b) On 22nd April, 1970 an Office Memo bearing No.IITD/Estt-1/19-70/948, dated 22nd April, 1970 appointing plaintiff as Visiting Staff Member was issued w.e.f. 23rd January, 1970 up to 30th June, 1970 which was extended from time to time till 30th November, 1971. The Memo also stated

that the plaintiff (who proceeded abroad on 23rd June, 1971) was expected to return by 2nd September, 1971. The period of his absence was to be treated as leave of the type due for which notification will be issued after his title to leave is determined. Thereafter, w.e.f. 1st October, 1972 the plaintiff was appointed as Professor of Economics on the unanimous recommendation of a nine member Selection Committee headed by Dr. Manmohan Singh who is presently Prime Minister.

c) An Office Memo bearing No.IITD/Estt-1/19-70/6052, dated 9th October, 1971 was issued appointing plaintiff as Professor w.e.f. 1st October, 1971 to be on probation for one year up to 30th September, 1972. Plaintiff objected to one year's probation, when he had already been working for 21 months. More than 6 months later on 20th June, 1972 the Board of Governors of the defendant Institute informed the plaintiff of its refusal to waive probation period stating "Your confirmation will therefore be considered in the normal manner after you have completed the probationary period satisfactorily. (probation is extendible under Section 13(3), only "if found necessary").

d) Thereafter by Office Memo bearing No.IITD/Estt-1/19-70/362, dated 20th September, 1972 the period of probation of the plaintiff was extended by three months w.e.f. 1st October, 1972.

e) Thereafter by an Office Memo bearing No.IITD/Estt-1/19-70/950, dated 11th December, 1972, the plaintiff's appointment was illegally, arbitrarily with malafide motive terminated with effect from 11th December, 1972.

f) Thereafter, on 19th December, 1972, the plaintiff filed a writ petition in the Delhi High Court being C.W.P. No.1267 of 1972 for quashing orders

of extension of probation and termination. The High Court vide order dated 18th January, 1973 dismissed the above said petition as withdrawn. The defendant sent a notice of eviction from premises on 9th February, 1973.

g) On 6th March, 1973 the plaintiff filed a suit being Civil Suit No.140 of 1973 before the District Court, Delhi praying for a declaration that he continues in the service of the defendant and seeking an injunction from dispossession of premises. That on 11th February, 1976, learned Sub Judge, Delhi dismissed the suit on preliminary issues. Thereafter on 20th May, 1976 the plaintiff filed an appeal which was renumbered as M.C.A. 10 of 1979 which was dismissed by the learned Additional District Judge, Delhi vide order dated 17th September, 1982.

h) On 17th September, 1982 the plaintiff filed a Revision Petition being CRP No.163 of 1982 in this Court against the order dated 17th September, 1982 which was subsequently allowed by the Court vide order dated 13th August, 1985 setting aside the judgments of the Sub Judge and Additional District Judge and remanding the suit back to the learned Sub Judge for decision on merits. In this suit, renumbered as Suit No.264/85 on 20th February, 1991 the learned Sub Judge, Delhi declared the termination order dated 11th December, 1972 as null and void and gave a declaration that the plaintiff was entitled to be treated as continued in the service of the defendant Institute without interruption as Professor in Economics.

i) Thereafter by his legal notice dated 2nd March, 1991 the plaintiff required the defendant Institute to comply forthwith the aforesaid judgment dated 20th February, 1991 passed in Suit No.264/85.

j) By his letter No.IITD/D/VII-26/172, dated 18th March, 1991, Director IIT, Mr. Nigam wrote to the plaintiff to inquire if he would like to serve the

IIT as a fulltime Professor. Thereafter by letter No. IITD/D/VII-26/187, dated 22nd March, 1991, the Director IIT stated that the plaintiff should report immediately to the Institute. This was duly accepted by the plaintiff vide letter dated 27th March, 1991. Furthermore, on the same day plaintiff wrote another letter to the defendant requesting that he be permitted to demit office as Professor at IIT.

k) By its letter No. IITD/E-I/B-575, dated 21st May, 1991 the plaintiff was informed about the acceptance of his resignation. The letter stated that he was allowed to draw regular increment due to him as on 1st October, 1972 and also that he will be paid arrears as admissible under the rules of the Institute.

l) On 18th March, 1992 the plaintiff wrote to the defendant Institute enclosing the detailed accounts of the amounts which according to him, were due to him from the IIT for the period 11th December, 1972 to 27th March, 1991.

m) On 5th May, 1992, the plaintiff served on the defendant, a legal notice claiming all his aforesaid dues. The defendant replied to the legal notice sent by the plaintiff vide letter No.IITD/D/VII-26/50, dated 28th January, 1993 stating that the proceedings have been initiated regarding the settlement of plaintiff's claim and also asked for the details of emoluments earned by the plaintiff during his employment at Harvard University.

n) On 9th February, 1993, the plaintiff wrote to the defendant Institute applying to avail of leave under Rules 18 and 19 of the IIT Delhi Schedule D Leave Provisions.

- o) On 24th March, 1993 by letter No. IITD/D/VII-26/173, the Director, IIT Delhi replied to the plaintiff. Thereafter on 24th September, 1993, the plaintiff replied thereto. Thereafter on 30th September, 1993, by letter No. IITD/D/VII-26/1571, the Director IIT Delhi wrote to the plaintiff that the issues raised were being examined.
- p) On 26th October, 1993, by his letter No.IITD/D/E1/U1/5956, the Director, IIT Delhi wrote to the plaintiff denying the plaintiff's claims to retrospective leave sanction etc.
- q) The plaintiff sent a final notice of demand dated 17th December, 1993 regarding settlement of arrears and also retrospective sanction of leave for the period of 10th July, 1973 to 19th August, 1973 and 19th July, 1985 to 19th September, 1986.
- r) In reply to this final notice, the Registrar Amarjit Singh by letter No. IITD/D/E-1/10095, dated 30th March, 1994 informed the plaintiff that his request regarding retrospective sanction of leave without pay and of pension had not been accepted but that of house rent allowance has been approved.
- s) The plaintiff has preferred the instant suit seeking recovery of salary and allowances in revised grade from 12th December, 1972 (the date of illegal termination) till 21st May, 1991 (date of acceptance of resignation by the defendant) alongwith interest @ 18% p.a. w.e.f. 20th February, 1991 till the date of payment of pension and gratuity to be paid as per today against the defendant. On 5th July, 1994 the plaintiff wrote to Dr. P.J. Kurien, Chairman, Board of Governors requesting him to treat the illegal termination order as null and void and clear the emoluments due to him as Professor. Furthermore, the plaintiff wrote to the then Union Minister for Human Resource Development Mr. Madhavrao Sciendia to intervene in the matter.

That on 12th April, 1997 the plaintiff requested Mr. Ramakant Khalap, the then Minister of State for Law and Justice to look into the matter and advise the defendant regarding the clearing of dues.

t) On 28th January, 2000, on not receiving any further communication from the defendant, the plaintiff filed a writ petition in this Court being CWP No.563 of 2000 praying therein that the defendant pay to the plaintiff without any further delay the salary and allowances in revised grade from 12th December, 1972 till 21st May, 1991.

u) By its order dated 1st February, 2000 this Court rejected the above said petition stating, inter alia, that it cannot be a subject matter of writ under Article 226 of the Constitution and if at all the remedy is available to the plaintiff, it is by way of civil suit.

v) On 15th June, 2000, the plaintiff wrote a letter to the Chairman, Board of Governors, IIT, regarding settlement of dues. On 16th January, 2001, the plaintiff wrote a letter to the Registrar, IIT Delhi regarding settlement of dues and under which section of the Statute and Rules the defendant is proposing to deduct his earnings at Harvard. On 12th February, 2011 A.S. Malhotra, Registrar, IIT wrote to the plaintiff letter No.IITD/E-1/U-2/571 requesting him to submit details of earning during his employment at Harvard.

w) The Registrar wrote to Mr.P.M. Nair, the then Secretary to the Presiding of INida vide letter No.IITD/E-1/U-14256, dated 18th November, 2002 stating that the period spent by the plaintiff at Harvard University cannot be treated as Extra Ordinary Leave.

x) Thereafter on 14th July, 2003 Professor R.S. Sirohi, Director, IIT was sent a requisition from Mr.Mukul Ratra (Dep. Sec.) for taking necessary steps for making payment of the dues to the plaintiff.

y) On 7th March, 2008, the plaintiff wrote to the Prime Minister requesting his intervention in the matter of payment of dues. Furthermore, on 11th April, 2008, the Director, IIT was requested to furnish the facts of the case of Mr.Yatendra Kumar, Under Secretary to the Government of India, Ministry of Human Resources and Development. Finally, on 25th February, 2010 the Minister of Human Resource and Development, Mr.Kapil Sibal by his letter D.O. No.F.39-1/2008-TSI(PE) wrote to the plaintiff stating that Fundamental Rule 54 requires Government of India to adjust the amount received as gainful employment. Also plaintiff's request that gainful employment at Harvard be excluded by granting extraordinary leave retrospectively was not acceded to. Accordingly the Hon'ble Minister decided that "the matter is now decided at our end"; and that the plaintiff might avail of any remedy that he might have in law.

z) The plaintiff has written back to the Hon'ble Minister disagreeing with his view. In view of the letter of the Hon'ble Minister, it has become necessary to approach the courts for resolution thereon. Hence the instant suit.

2. In the plaint, the following is the para of cause of action, which reads as under :

"The cause of action initially arose on 11th December, 1972, when the plaintiff was illegally terminated from the post of Professor at IIT, Delhi. The cause of action again arose in December, 1972 when the plaintiff filed in the Delhi Court the Writ Petition C.W.P. No.1267 of 1972 challenging his termination. The cause of action again arose on

6th March, 1973 when the plaintiff files a Suit No.140 of 1973 in the Court of Senior Sub Judge, Delhi. The cause of action further arose on 11th February, 1976 when the suit got dismissed on preliminary issues. The cause of action again arose on 20th May, 1976 when the plaintiff filed an appeal M.C.A. No.10 of 1979 before the District Judge, Delhi. The cause of action again arose on 17th September, 1982 when the appeal got dismissed. The cause of action further arose on 13th August, 1985 when the plaintiff's revision petition C.R.P. No.163 of 1982 was allowed by the Delhi High Court. The cause of action further arose in favour of the plaintiff and against the defendant on 20th February, 1991 when the termination order of the plaintiff was termed as null and void and that the plaintiff was entitled to be treated as continued in service. The cause of action again arose on 22nd March, 1991 when the defendant inquired whether plaintiff would like to serve as full time Professor. The cause of action further arose on 21st May, 1991 when plaintiff's resignation was accepted by the defendant and that plaintiff is allowed to draw regular increments due to him as on 1st October, 1972. The cause of action further arose on 3rd January, 1992 when the plaintiff served on the defendant a legal notice for settlement of dues. The cause of action again arose on 28th April, 1992 when the plaintiff was asked by the defendant to opt for revised pay scales and GPF cum pension scheme. The cause of action further arose in favour of the plaintiff on 28th January, 1993 when the defendant stated that the proceedings have been initiated in regard to the settlement of plaintiff's claim. The cause of action again arose on 17th December, 1993 when the plaintiff sent a final notice for settlement of arrears. The cause of action further arose on 5th July, 1994 when the plaintiff wrote to P.J. Kurien, Chairman, Board of Governors of the Defendant Institute to clear the emoluments due to him. The cause of action again arose on 9th August, 1995 when the plaintiff wrote to Mr. Madhavrao Sciendia, Minister for Human Resources and Development to intervene in the matter. The cause of action again arose on 10th February, 1996 when the plaintiff received requisition from Km. Shelja, Minister of State in the Ministry of Human Resources and Development to submit complete details of his earnings at Harvard and period of accommodation provided by Government of India. The cause of action further arose on 12th April, 1997 when the plaintiff requested the Minister of State for Law and Justice to look into the matter. The cause of action again arose on 28th January, 2000 when the plaintiff filed a Writ Petition No.563/2000.

Furthermore the case of action arose on 1st February, 2000 when this Court rejected the aforesaid writ petition without a speaking order. The cause of action again arose on 16th January, 2001 when the plaintiff wrote a letter to the Registrar, IIT regarding settlement of dues. The cause of action further arose on 12th February, 2001 when the defendant requested the plaintiff to submit details of earnings during his employment at Harvard. The cause of action again arose on 18th November, 2002 when the Registrar wrote a letter to Mr. P.M. Nair, Secretary to the President of India stating that the time spent by the plaintiff at Harvard cannot be treated as Extraordinary Leave. The cause of action further arose in favour of the plaintiff and against the defendant when Prof. Sirohi received requisition to take necessary steps for making payment of the dues to the plaintiff. The cause of action further arose on 11th April, 2008 when the Director, IIT was requested to furnish the facts of the case of the Under Secretary to the Government of India, Ministry of Human Resources and Development. The cause of action finally arose on 25th February, 2010 when Mr. Kapil Sibal, Minister of Human Resource Development, Government of India wrote a letter to the plaintiff by rejecting the claims of the plaintiff. Hence the suit is within time.”

3. The plaintiff made the following prayer :
 - a) Pass a decree for recovery of salary and allowances in revised grade from 12th December, 1972 till 21st May, 1991 which comes to ₹19.50 lac alongwith interest @ 18% w.e.f. 20th February, 1991 till the date of payment of gratuity and pension to be paid as per today in favour of plaintiff and against the defendant.
4. During the pendency of the suit, the petitioner who is the defendant filed an application under Order 7 Rule 11 CPC for rejection of plaint on various grounds the same are :
 - a) That the suit is barred by limitation as the plaintiff is to recover the amounts allegedly due to him for the period 11th December, 1972 to 21st May, 1993.

b) That the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction. The claim of the plaintiff is for recovery of ₹19.50 lac alongwith interest @ 18% w.e.f. 20th February, 1991. It is submitted that even assuming that the plaintiff has paid the advolarum court fees on the said amount of ₹19.50 lac, the principal amount inclusive of interest, quantified and being claimed is really ₹70,20,000/- as on February, 2011 and hence this court does not process pecuniary jurisdiction to entertain the present suit.

c) That the suit is without cause of action and the plaintiff has no right to sue the defendant. It is submitted that from the letters dated 28th January, 1993, 30th March, 1994, 12th February, 2001, 18th November, 2002 and 25th February, 2010, it clearly emerges that the claims of the plaintiff have been constantly denied on ground of his failure to provide the details of the amounts earned from his employment for the period between 11th December, 1972 to 27th March, 1991. In terms of the Fundamental Rule 54 and the fact that his absence from the institution during this period was not treated as extra ordinary leaves.

5. Reply by way of counter affidavit has been filed on behalf of plaintiff to oppose the defendant's application under Order 7 Rule 11 CPC by submitting that it was only in 2009 the plaintiff came to know through a RTI application that the defendant had falsely presented to the Board of Governors the case of his demand for his dues and that it was on this false presentation with the Board of Governors, they had negative the plaintiff's demand for his dues. Since the plaintiff came to know of the fraud of the

defendant only in 2009, hence limitation began to run only from 2009 and the instant suit is not time barred.

6. It is further submitted that Fundamental Rule 54 is concerned with reinstatement and the judgment dated 20th February, 1991 passed in suit No.264/85 by the learned Sub Judge, Delhi by holding that the termination of the plaintiff by the defendant is null and void and also holding that the plaintiff is entitled to be treated as continued in services without interruption in the defendant's Institute.

7. By the impugned order the learned Trial Court dismissed the application filed by the petitioner/defendant for rejection of the plaint, even though it was clearly demonstrated that on reading the plaint and documents as a whole, the suit was liable to be rejected in terms of clauses (a), (b), (c) and (d) of Order VII Rule 11 CPC.

8. i) In *Mayar (H.K.) Ltd. and Ors. Vs. Owners and Parites, Vessel M.V. Fortune Express and Ors.* (AIR 2006 SC 1828) that :

“Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose. The material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the Court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.”

ii) In *Liverpool & London S.P. & I Association Ltd. vs. M.V.Sea Success I*, (2004) 9 SCC 512, their Lordships had succinctly and perspicuously covered the conundrum before us in these words :

“Rejection of plaint

139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct.”

9. During the course of hearing of the present petition, the learned counsel appearing on behalf of the petitioner has tried to make his submission on merit of the case and demonstrates that the suit filed by the plaintiff is not maintainable as it does not disclose cause of action and also barred by limitation. However, he was not able to give the answer to query raised by the Court as to whether there is any averment made in his application or in the plaint which show that the respondent's claim was rejected by the petitioner for the payment of the dues prior to the period of three years on the date of filing of the suit which may establish from the reading of the plaint that the suit was barred by limitation. There was no positive response except it was argued that the claims are barred by limitation and there is no valid cause of action for filing the suit.

10. From the reading of plaint as well as the averment made in the para of cause of action it was mentioned that finally it was on 11th April, 2008 when Director, IIT was requested to furnish the fact of the case of the Under Secretary to the Government of India who in return through Ministry of Human Resources and Development by letter dated 25th February, 2010 rejected the claim of the respondent.

11. In case that the said averments are believed, the finding of the Trial Court for rejecting the application cannot be interfered with. The plaint is not liable to be rejected at this stage in view of averment made therein. It is settled law that while deciding such application, the court is not concerned with the merit of the case of the plaintiff who may have very weak case on merit. But under the scheme of the provision, the courts have to determine the application filed on the basis of reading the entire plaint and if it is found that the averment made in the plaint discloses even some cause of action which requires determination, then it is not proper to reject the plaint at the initial stage.

12. Even otherwise, while exercising the power of Section 115 CPC which are revisional powers, the contention of the petitioner can not be accepted. But I am also of the opinion that the issue raised by the petitioner in the application under Order 7 Rule 11 CPC are important and the same have to be considered as per their own at the appropriate stage of the suit without any influence of this order or the impugned order passed by the learned Trial Court.

13. With these directions, the present petition and pending application are disposed of.

14. No costs.

(MANMOHAN SINGH)
JUDGE

DECEMBER 17, 2013