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

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Date of Decision: 07.11.2016

+ **W.P.(C) 10530/2016, CM APPL. 41307/2016 (stay)**

JAIVEER SRIVASTAVA

..... Petitioner

Through: Mr. K. Varghese, Mr. Mathew K.,
Mr. V. Shyamohan, Mr. Nitin Walia, Ms. Soumya
Sharma, Ms. Smrithi Sunesh and Mr. Deepak
Grover, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Ajay Digpaul, CGSC for R-1 &
R-2.

Mr. P.S. Narsima, Senior Adv. with Mr. Ritin Rai
and Mr. Aabhas Kshetarpal, Advs. for respondent
(FACT).

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (oral)

1. Mr. Ajay Digpaul and Mr. Ritin Rai, Advocates, who appear on service of advance copy state that the matter may be heard and disposed off finally.
2. At joint request, the case is taken up for final hearing.
3. The petitioner is aggrieved by order dated 02.11.2016 whereby he has been removed from the post of Chairman and Managing Director of respondent no.3 i.e. Fertilizers and Chemicals Travancore Limited (FACT) with immediate effect. The petitioner was appointed to the said post on a contractual basis for a period of five years by order of respondent no.1, dated 12.02.2013. The terms and conditions of employment were incorporated in

letter dated 16th October, 2014 from respondent no. 1 to respondent no. 3. Clause 1.1 of the said letter reads as under:

“(1.1) Period:- His appointment will be for a period of five years w.e.f. 01.04.2013 (F.N.) in the first instance or till the date of superannuation or until further orders, whichever event occurs earlier and in accordance with the provisions of the Companies Act, 1956 as amended. The appointment may, however, be terminated even during this period by either side on 3 months’ notice or on payment of three month salary in lieu thereof.”

4. It is the petitioner’s case that although the government had the option to terminate the services with three months’ notice, nevertheless, Clause 1.15 [Conduct, Discipline and Appeal Rules] of the same document, as framed by the FACT would apply in the present case. It reads as under:

“(1.15) Conduct, Discipline and Appeal Rules:-

(1.15.1) The Conduct, Discipline and Appeal Rules framed by the FACT in respect of their non-workmen category of staff would also mutatis mutandis apply to him with the modification that the Disciplinary Authority in his case would be the President of India.

(1.15.2.) The Government also reserves the right not to accept his resignation if the circumstances so warrant i.e. the disciplinary proceedings are pending or a decision has been taken by the Competent Authority to issue a charge sheet to him.”

5. The petitioner is aggrieved by the manner in which he has been

removed without being given a hearing. Therefore, it is contended by the learned counsel for the petitioner that there is breach of principles of natural justice and the removal of the petitioner is stigmatic. He submits that insofar as the Conduct, Discipline and Appeal Rules are applicable to the petitioner, he should have been given a Show Cause Notice and should have been removed only after an inquiry was conducted. He relies upon a Division Bench judgment of this Court in *M. Gopalakrishnaiah v. Union of India*, C.W.P. 3157 of 1993, decided on 10.05.1994 wherein an identical clause apropos the removal of the petitioner from the post of Executive Director was examined. However, the Court is of the view that that case related to the removal of the Executive Director (ED) of a Bank who was sought to be removed on the basis of allegations of financial irregularity of an officer junior to the ED. The latter was not directly involved in the transactions for which the junior officer was charged.

6. In the present case, there is no dispute that a CBI inquiry was instituted against the petitioner pursuant to allegations of allowing cartelization for a tender bid for the sale of gypsum and after the preliminary inquiry a FIR was lodged by the CBI; the government has *prima facie* found that the petitioner was in collusion with those who participated in the cartelization of the tender; this cartelization was to the detriment of the financial interests of the respondent – Corporation.

7. Mr. P.S. Narsima, ASG, the learned Senior Advocate for the respondent no.3 submits that the terms of the contract have been duly complied with insofar as it provided both the parties the right to terminate the contractual employment by service of 3 months' notice or on payment of three month salary in lieu thereof. He submits that the petitioner was

“removed” from service on 02.11.2016. A corrigendum has been issued on 04.11.2016 replacing word “removed” with “terminated”. The petitioner has been paid three months’ salary into his bank account by electronic transfer. Insofar as Clause 1.1 of the letter dated 16th October, 2014 is concerned, it stands duly complied with. Therefore, according to the learned counsel for the respondent nothing more needs to be done. He submits that government has perhaps mindfully not mentioned any reason in the termination letter as the same could be detrimental to the reputation of the petitioner.

10. The Court is of the view that the employment between the parties will be governed by the terms of the employment contract between the parties. Clause 1.15, as aforesaid, would apply only where the employer may have a desire to retain the service of the employee. In the present case, however, for whatever reason, the employer desired not to retain the services of the employee and terminated his service in terms of Clause 1.1 of the aforesaid letter. The five years’ tenure of employment of the petitioner could be ended by the employer for any reason whatsoever, only the 3 months’ notice or salary in lieu thereof would have to be paid under Clause 1.1. The latter payment has been duly effected. Hence, the termination of employment was as per the contract. There is no illegality in it.

11. The learned counsel for the petitioner also seeks to challenge the constitutional validity of the aforesaid Clause 1.1. However, no such ground has been made out in the petition nor has any such relief been sought in the Prayer clause. Moreover, it is not in dispute that the petitioner has accepted three month’s salary in lieu of notice by electronic transfer.

12. There is no merit in petition, hence, it is dismissed.

13. Dasti.

NAJMI WAZIRI, J

OCTOBER 21, 2016/acm