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

+ **RFA 57/2007**

BABU RAM KHARAB

..... Appellant

Through

Mr.Sanjeev K. Pabbi & Mr.Shivendu
Gaur, Advs.

versus

BLIND RELIEF ASSOCIATION & ORS

..... Respondent

Through

Mr.Sandeep Prabhakar, Mr.Amit
Kumar and Mr.Vikas Mehta, Advs.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER (ORAL)

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12.09.2017

1. Being aggrieved by the judgment and decree dated 03.11.2006 passed by the learned Additional District Judge, Delhi whereby the suit filed by the plaintiff/appellant for declaration and recovery against the defendants was dismissed, the present appeal has been preferred.

2. The facts enumerating from the plaint filed before the Court below are that the plaintiff/appellant was appointed as "Technical Instructor" under the defendants, a non-governmental organisation registered under the Societies Registration Act, XXI of 1860 vide appointment letter dated 13.06.1994. It was further stated that the plaintiff/appellant completed his probation successfully and was confirmed by the defendants vide letter dated 31.03.1995. The

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plaintiff/appellant requested his case for the demand of equal scale for equal rank i.e. for revision of pay scale vide his application dated 20.01.1998 and subsequent reminders dated 01.04.1998 and 14.05.1998 which were replied in a vague manner by the defendants vide their letter dated 30.12.1998. The plaintiff/appellant again made an application dated 13.07.1998 to the defendants objecting to the anomalies in the pay scale of Technical instructors in response to the reply of the defendants dated 31.12.1998. It was further mentioned that the plaintiff/appellant demanded his due claim vide his application dated 03.03.1999 which was replied vide their reply dated 06.04.1999. The plaintiff/appellant is said to have made repeated requests regarding his claim with the defendants but to no avail. Thereafter, the plaintiff/appellant was superseded by Mr.A.David whereby he was placed as an Officiating Work Manager in place of the plaintiff/appellant who had the legitimate right and claim for the same. The plaintiff/appellant objected to the above illegal act of the defendants vide letter dated 08.04.2005 but the same was of no use. It was further submitted that the claim of the plaintiff/appellant for revision of his pay scale and claim for promotion was turned down by the defendants illegally without the due process of law, ignoring all rules and regulations.

3. In the written statement filed on behalf of the defendants, it was stated that the suit for declaration and recovery was not maintainable as it was barred by limitation and was also violative of the provisions of Order 1 Rule 9 CPC. Defendants further stated that the suit of the

plaintiff was without any merits and was liable to be dismissed and that suit was bad for misjoinder of parties i.e. defendant no.2 and 3.

4. On the basis of pleadings of the parties, following issues were framed by the Court below :

(1)Whether suit is barred by limitation? (OPD)

(2)Whether suit is bad for non-joinder of A.David?
(OPD)

(3)Whether conduct of the plaintiff was not up to the mark? (OPD)

(4)Whether plaintiff is entitled to the decree of declaration as prayed for? (OPP)

(5)Whether the plaintiff is entitled to recovery of arrears of pay and allowances as prayed for? (OPP)

5. To prove his case, the plaintiff deposed as PW1. The defendant on the other hand, tendered affidavit in evidence as DW1.

6. The Court below decided all the issues against the plaintiff/appellant and dismissed the suit. Feeling aggrieved by the judgment and decree in the present suit, the present appeal has been filed.

7. The argument advanced by the counsel for the plaintiff/appellant is that the appellant was placed under probation for a period of six months which was further extended for another three months. As per clause 3 of the appointment letter (Ex.PW-1/B) it was stated that after confirmation the appellant shall be placed at the salary in

scale fixed for the post of Technical Instructor. It was further submitted that paragraph 8 of the appointment letter (Ex.PW-1/B) clarified that the appellant was to be governed by Standing Orders and Services Rules of the Association. On being issued with an office order confirming the service of the appellant in the grade of Technical Instructor w.e.f. 01.04.1995, the appellant realised that the pay scale given to him did not match that which was mentioned in his office order. In January, 1998 when the appellant came to know about the said discrepancy, he moved number of applications for rectification of the wrong done to him, but to no avail. Consequently, on 30.12.1998 a reply was received by the appellant stating therein that the emoluments being paid to him were commensurate with his educational qualifications, the work entrusted to him and his experience.

8. On the other hand, argument advanced by the counsel for the respondent is that the pay and emoluments paid to the plaintiff/appellant were as per his appointment letter. The plaintiff/appellant never raised any question about his appointment and accepted the offer of appointment on the terms and conditions mentioned therein. Initially the period of probation was for six months but due to unsatisfactory work of the plaintiff/appellant the probation period was further extended for a period of three months. It was further argued that there is no anomaly in the pay and emoluments paid to the plaintiff/appellant. It was further argued that the suit was bad for misjoinder of necessary parties as the plaintiff/appellant has claimed the equal pay for equal work as paid to Mr.A. David and the said

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person has not been made a party to the suit. It was further argued that the claim in the suit was barred by limitation as the plaintiff/appellant had claimed the parity in pay and arrears thereof since 1998 whereas the suit was filed in the year 2005.

9. Arguments advanced by the counsel for the parties were heard and I have gone through the evidence, documents and material placed on record.

10. With respect to the fact that the said suit is barred by limitation, it is evident from Article 58 of the schedule of the Limitation Act that a period of three years is prescribed to file and obtain any declaration. In the present suit, the right to sue first accrued on 31.03.1995 when the plaintiff/appellant was confirmed by the respondents vide letter (Ex.PW-1/B) dated 31.03.1995. This letter (Ex.PW-1/B) was duly accepted by the plaintiff/appellant thereby making 31.03.1995 as the first date when the right to sue first accrued and the limitation period commenced from this date onwards. Apparently, the plaintiff/appellant applied for the job on 21.04.1994 which was duly considered by the respondents and the respondents appointed appellant to the post vide letter (Ex. PW1/A) dated 13.06.1994 and appellant was asked to report on duty on 01.07.1994. It is evident from the record that the appellant's probation period was extended and thereafter he was confirmed to the post vide office order dated 31.03.1995 (Ex.PW-1/B). The appellant had questioned the discrepancy in the pay scale he received to that mentioned in the order dated 31.03.1995 and the same was rejected vide letters dated 30.12.1998 (Ex.PW1/F) and 06.04.1999 (Ex.PW-1/I). At the most, the

appellant could have started the limitation period from the first date of rejection of his application for revision of pay scale, being 30.12.1998. Thus, the suit was clearly barred by limitation as it was not filed within the said period.

11. Now, coming to the issue whether the suit is bad for non-joinder of Mr.A.David thus preventing the appellant from claiming a promotion in his post. The counsel for the appellant has argued that the appellant has not prayed for any relief against Mr.A.David, but has only referred that Mr.A.David is junior to him in appointment and also belongs to a different branch from which no workshop manager has ever been promoted, till date. It is the submitted by the counsel of the appellant that such a submission does not lead to any adverse action nor does it challenge the ad hoc appointment of Mr.A.David.

12. It is evident from the plaint of the plaintiff/appellant that he was superseded by Mr.A.David by a circular dated 04.04.2005 whereby Mr.A.David was placed as officiating Work Manager in place of the plaintiff/appellant. Since, the appellant has prayed for a relief with respect to the benefit of promotion from 08.04.2005, and the fact that Mr.A.David has not been impleaded in the present matter, any order of promotion may jeopardise the existing employment of Mr.A.David. Therefore, it is explicitly stated that no order can be passed against any person without his being a party or having been heard in the matter. Thus, the appellant cannot be given the benefit of promotion which he is so seeking. Thus, the suit was also bad for misjoinder of necessary party i.e. Mr.A.David.

13. With respect to the appellant's claim of relief seeking recovery

of arrears of pay and allowances, it is evident from the material placed on record that the appellant applied for the said post on 21.04.1994 stating his qualification and experience therein. The said application of the appellant was not in reference to any public advertisement or recruitment rules or offer of the respondent. On the basis of the application of the appellant therein, the respondent offered the appellant the post of Technical Instructor and appointed him on a probationary basis entitling him to monthly emoluments. This said offer was subsequently accepted by the appellant, and he was hired as a probationary officer. Thereafter, vide office order dated 31.03.1995 (Ex.PW1/B) appellant was confirmed as Technical Instructor in the pay scale of Rs.1200-30-160-EB-40-2040 w.e.f 01.04.1995. This offer was further accepted by the appellant. Prima facie, it is evident that the nature of employment of the appellant with the defendant was contractual. When the nature of employment is contractual, being an offer and acceptance, the same shall be bound by the terms and conditions of the offer of acceptance and the employee cannot claim beyond the terms and conditions of the said contract. Further, the Apex Court has laid down in *Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors. AIR 2006 SC 1806* that the concept of equal pay for equal work is applicable to those who have appointed as per statutory rules and regulations or have been constitutionally appointed. The said concept of equal pay for equal work does not find applicability for contractual appointments.

14. In the present matter, the nature of employment is explicitly a contractual employment, in as much as it was an offer and acceptance

on part of the parties. The appellant was aware of the pay scale being offered for the post he applied for and if the same was not acceptable to him, he could have refused the offer. The appellant having accepted the offer of employment with the said pay scale, stands estopped now from disputing the acceptance of the offer dated 31.03.1995. Thus, the appellant cannot claim for arrears in salary as the same is not a valid claim in as much as the nature of employment was a contractual one.

15. In view of the discussion made above, no error has been found in the judgment and decree passed by the Court below and the same is accordingly upheld.

16. The present appeal is accordingly dismissed.


P.S/TEJI J

SEPTEMBER 12, 2017

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