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

\+ **W.P.(C) No. 5598/2011**

% **16th March, 2017**

DR. KANTI PRASAD ..... Petitioner

Through: Mr. M.K. Bhardwaj and Mr. M.D. Jangra, Advocates.

versus

INDIAN INSTITUTE OF TECHNOLOGY & ANR. ..... Respondents

Through: Mr. T. Singh Dev and Ms. Baikthansangi, Advocates for R-1.
Mr. Anurag Ahluwalia, CGSC with Ms. Nisha Sharma, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of quashing of the order/letter dated 27.12.2010 of the Ministry of Human Resource Development, Department of Higher Education, by which the Ministry informed the petitioner that as regards the petitioner's services with the respondent no. 1/Indian Institute of Technology (IIT) there was no pending claim of the petitioner.

2. The facts of the case are that the petitioner was given a contractual appointment for one year in terms of the letter dated 17.5.2007 of the respondent no. 1 on a consolidated salary of Rs.20,865/-. Petitioner was thereafter given two extensions and which extensions ended on 31.3.2010. Respondent no. 1 thereafter on failure of the petitioner to join the services terminated the services of the petitioner, inasmuch as, petitioner was already on leave without pay from 1.12.2009 and which absence continued even after the date of sanctioned leave of 31.3.2010. Petitioner by this writ petition seeks the higher scale of pay than that given to the petitioner and accepted by him in terms of the contractual appointment letter and extensions thereof. The petitioner claims higher pay-scale on the basis of certain government guidelines which petitioner claims applies to the petitioner.

3. The fact of the matter is that the present writ petition is totally misconceived, inasmuch as, petitioner's appointment with the respondent no. 1 was a contractual appointment at a consolidated salary of Rs.20,865/- in terms of offer of appointment letter dated 17.5.2007. If the petitioner did not want the contractually fixed salary then petitioner need not have joined at all the services of respondent no. 1. Petitioner not only joined the services of respondent no. 1,

continued his services with the respondent no. 1 for the original period of one year, in fact got two extensions thereafter till 31.3.2010, and therefore petitioner cannot claim that inspite of petitioner acting as per the contract and also the respondent no. 1 as per the contract by paying the contractually fixed salary, yet the petitioner should be paid a higher salary than the contractually fixed salary. A contractual appointee can only be paid a contractual salary unless and until the contractual salary is a higher figure as provided by any statutory provision or mandatory guidelines of the competent authority including the parent Ministry of the respondent no. 1, and which is not so in the facts of the present case. Therefore, petitioner has no valid basis to claim any higher monetary emoluments than that as were contractually due to the petitioner and which must have already been paid to the petitioner.

4. (i) Learned counsel for the petitioner argued that in the selection committee which appointed the petitioner, petitioner was recommended a consolidated salary of Rs.27,500/- but petitioner has not been paid this consolidated salary of Rs.27,500/- and instead was paid only Rs.20,865/- and therefore petitioner is at least entitled to the higher salary at Rs.27,500/- from the first date of appointment. In support of this argument, counsel for the petitioner places reliance

upon Annexure P-1 to the additional affidavit of the petitioner dated 23.1.2013.

(ii) This argument of the petitioner is misconceived because a reference to Annexure P-1 of the additional affidavit of the petitioner shows that petitioner was only recommended for a salary of Rs.27,500/- but as per the same note he was to be paid as per the rules the salary of Rs.20,865/-. There is a difference between a recommendation and a contract with respect to payment of a particular amount. Therefore, once there is no contract and there was only a recommendation for payment at Rs.27,500/-, and which recommendation was not accepted by respondent no. 1, petitioner therefore cannot get the higher salary of Rs.27,500/- instead of the contractually fixed salary of Rs.20,865/-.

(iii) There is another reason for the disentitlement of the petitioner to the higher salary of Rs.27,500/-, as stated above and which is that if the petitioner did not want to work at a consolidated salary of Rs.20,865/- but wanted a salary of Rs.27,500/-, then petitioner should have rejected the job offer and not have accepted the job offer and worked for the job offered with further extensions at fixed salary amounts. This argument of the petitioner, therefore, is rejected.

5. (i) Another argument urged on behalf of the petitioner was that since the office memorandum dated 31.5.2007 of the respondent no. 1 directed that petitioner's salary will be Rs.20,865/- per month but services of the petitioner will be governed by the Terms and Conditions mentioned in the letter dated 17.5.2007, and the letter dated 17.5.2007 allows petitioner in addition to salary, DA, HRA, PF benefits, Insurance premium, etc., hence, petitioner should be granted additional allowance towards HRA, PF benefits, Insurance premium, etc. Petitioner has placed reliance on para 2 of the Terms and Conditions governing the post and the said para 2 reads as under:-

> "2. PAY AND ALLOWANCES: Consolidated salary offered for the project post include: Basic pay and DA, HRA, PF benefits and Insurance premium to cover against medical and hospitalization for self and dependent family members and accident insurance for self. Further, the candidate is required to deposit one month's salary as security (in a maximum of two installments within two months) in cash counter with intimation to IRD Accounts."

(ii) Once again this argument urged on behalf of the petitioner is misconceived because this aforesaid para 2 of the Terms and Conditions is clear that the consolidated salary offered to the petitioner includes all aspects of basic pay, DA, HRA, PF benefits, Insurance premium, etc, and therefore once the salary package is a fixed salary amount which includes DA, HRA, PF benefits, Insurance premium, surely therefore there is nothing in the language of para 2 to support the contention of the petitioner for being granted higher amounts in addition to the fixed salary amount in terms of the appointment letter.

6. (i) Finally, counsel for the petitioner argued by placing reliance upon the recommendations of the committee constituted by the respondent no. 1 for salary fixation of professionals who superannuated from government services and were hired by respondent no. 1, and which committee report dated 7.10.2010 provided in para 6 that consolidated amounts given should be revised after every two years as per DA recommendations, and therefore it is argued that petitioner in addition to the fixed salary amount should get higher DA component whenever higher DA payments were made by the Central Government to its employees.

(ii) Once again this argument is misconceived because petitioner did not continue in service with the respondent no. 1 after 31.3.2010, and this report relied upon is of a later date i.e 7.10.2010, and consequently this report dated 7.10.2010 can only have prospective application and not retrospective application.

7. Dismissed.

MARCH 16, 2017 **VALMIKI J. MEHTA, J**

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