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

+ **W.P.(C) 12035/2016**

GURUDUTT KANSOTIA

..... Petitioner

Through: Mr. Om. Dutt Sharma and Ms.
Meena Kohli, Advocates

versus

BHARAT PETROLEUM CORPORATION AND ORS

..... Respondents

Through: Ms. Raavi Birbal with Mr.
Ankit Parashar and Mr.
Kushagra Bawa, Advocates

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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06.01.2017

1. This writ petition is filed impugning the orders of the departmental authorities; of the disciplinary authority dated 26.6.2000 and the appellate authority dated 26.12.2000; by which the petitioner was dismissed from services of the respondent no.1-company-M/s Bharat Petroleum Corporation.

2. It is seen that the orders which are challenged before this Court in the year 2016 are of the year 2000 i.e around 16 years back. It transpires

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that the reason for this delay is that the petitioner had filed a suit in the year 2001 to impugn the very same orders of the departmental authorities and this suit was withdrawn by the petitioner as per the order dated 7.10.2014 of the concerned civil court and which order reads as under:-

“07.10.2014

Present: Sh. Om Dutt Sharma, Ld. Counsel for the plaintiff along with plaintiff in person.
Sh. Dhiraj Kaushik, Ld. Proxy Counsel for the defendant.

Today the plaintiff has got his statement recorded to the effect that he wishes to withdraw the present suit with a liberty to file the fresh claim at the appropriate forum.

Considering the submission made, the present suit is dismissed as withdrawn. Plaintiff is at liberty to raise his claim before the appropriate forum subject to the law applicable in such case. Copy of the order be given dasti to the parties, as prayed. File be consigned to record room after necessary compliance.

3. A civil suit as per Section 9 CPC would be maintainable to challenge any action which a person impugns affecting his legal/civil rights, more so because the actions impugn of the orders of the departmental authorities are not the under the statutory provisions, and therefore, the civil suit filed by the petitioner was maintainable before the civil court under Section 9 CPC. No doubt, petitioner withdrew the suit and was given liberty to file a claim before the appropriate forum, but really there cannot be any

doubt as to maintainability of the suit in the civil court of course to be divided as per all other defences of the respondent no.1 in the said suit as respondent no.1 is the defendant in the said suit. It is thus seen that withdrawal of the suit on 7.10.2014 was under a misconception of law and misconception of law does not create an estoppel against the petitioner to seek revival of the suit by seeking recall of the order dated 7.10.2014.

4. In view of the above, I have put it to counsel for the respondent no.1 as to why the suit should not be revived inasmuch as the suit remained pending for as many as 14 years, pleadings were completed, issues were framed and plaintiff's/petitioner's evidence was partly led and to which counsel for respondent no.1 states that the suit can be restored but all defences of the respondent no.1 including the defence that reinstatement and other claims effectively for the same reliefs cannot be granted, though the orders of the disciplinary authorities are set aside, and may be some other reliefs if allowable in law, may be granted subject of course to the petitioner herein succeeding in the civil suit. Counsel for the petitioner has therefore no objection for not pressing of the present writ petition but instead to seek

revival of the civil suit by recall of the order dated 7.10.2014 reproduced above.

5. In view of the above, this writ petition is disposed of with liberty to the petitioner to seek recall of the order dated 7.10.2014 in CS(OS) No. 624/2002, and which order has been reproduced above, and the concerned civil court after recalling of the order dated 7.10.2014 will proceed from the same stage at which the suit filed by the petitioner was on 7.10.2014, and will then dispose of the suit in accordance with law.

6. The writ petition is accordingly disposed of with the aforesaid observations.

VALMIKI J. MEHTA, J

JANUARY 06, 2017

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