

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

+ **RFA No. 819/2017 & CM Nos. 35149/2017 - 35151/2017**

% **27th September, 2017**

SURENDER SINGH Appellant

Through: Mr. S. Prasad, Advocate

versus

THE REPUBLIC OF INDONESIA Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 35149/2017(Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 35151/2017(delay in filing the appeal)

For the reasons stated in the application, delay in filing the appeal is condoned.

CM stands disposed of.

RFA No. 819/2017 & CM No. 35150/2017 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the trial court dated 28.2.2017 by which

the trial court decreed the suit filed by the appellant/plaintiff for a sum of Rs. 32 lakhs only for a sum of Rs. 2,94,720/- with interest.

2. The facts of the case are that the appellant/plaintiff was appointed as an Electrician with the Indonesian Embassy, respondent/defendant. Appellant/plaintiff pleads that he was appointed as a permanent employee to the post of Electrician on 22.6.1998 and also got promotion as an Electrical Supervisor on 13.1.2011. It was pleaded by the appellant/plaintiff that he had completed 15 years of service till his unlawful termination by a verbal order. Appellant/plaintiff therefore filed the suit seeking relief of reinstatement, damages of Rs. 25 lakhs etc. The relief clauses of the plaint read as under:-

“It is therefore most respectfully prayed that this Hon’ble Court may be pleaded to pass the following reliefs : -

- a. Pass a decree in the favour of the plaintiff and against the defendant to re-instate him with the retrospective effect;
- b. Pass a decree in the favour of the plaintiff and against the defendant to pay PLAINTIFF’s salary since 30-04-2012 i.e. the date of the termination alongwith the pendentelite and further 18% interest p.a. till its final realization;
- c. Pass a decree in the favour of the plaintiff and against the defendant to pay Rs. 1,15,000/- towards the medical expenses to the PLAINTIFF which he spent on the treatment of his family alongwith the pendentelite and further 18% interest p.a. till its final realization;
- d. Pass a decree in the favour of the plaintiff and against the defendant to pay a sum of Rs. 25,00,000/- on account of loss of physical as well mental health of the PLAINTIFF, loss of reputation and to live miserably without any regular source of income for the upbringing his family and the education of his children alongwith the pendentelite and further 18% interest p.a. till its final realization;

- e. Pass a decree in the favour of the plaintiff and against the defendant to give proper benefits of his 15 yrs. service;
- f. Pass a decree in the favour of the plaintiff and against the defendant to treat plaintiff as per the law of the land for the welfare of the employees/worker;
- g. Pass any other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case."

3. It is seen that the trial court by the impugned judgment has granted the relief to the appellant/plaintiff of payment of 15 months salary on account of 15 years service, with each months salary for each year of service being granted as gratuity. Last drawn salary the appellant/plaintiff was Rs. 19,648/- per month and accordingly multiplying this figure to the figure of 15 months, the suit was hence decreed for Rs. 2,94,720/- along with interest at 9% from the date of filing of the suit till its realization.

4. Admittedly, the service contract shows that the service can be terminated by one months notice. Services of the appellant/plaintiff were terminated vide letter dated 1.5.2012. I may note that service rules contained in the model contract form were proved before the trial court as Ex.PW1/14 (colly) and which contained the relevant clauses 9 and 10. Therefore there is no illegality in the termination of services of the appellant/plaintiff, inasmuch as, once there is a clause of termination of service by one

month's notice the services of the employee can be terminated by giving one month's notice or salary in lieu thereof. Even if there is breach of contract by terminating service without one month's notice, yet the damages which can be awarded in law is the salary for one month only vide the judgment of the Supreme Court in the case of *S.S. Shetty vs. Bharat Nidhi Ltd.*, AIR 1958 SC 12. The relevant para of this judgment is para 12 and which para reads as under:-

“12. The position as it obtains in the ordinary law of master and servant is quite clear. The master who wrongfully dismisses his servant is bound to pay him such damages as will compensate him for the wrong that he has sustained. “They are to be assessed by reference to the amount earned in the service wrongfully terminated and the time likely to elapse before the servant obtains another post for which he is fitted. If the contract expressly provides that it is terminable upon, e.g., a month's notice, the damages will ordinarily be a month's wages...No compensation can be claimed in respect of the injury done to the servant's feelings by the circumstances of his dismissal, nor in respect of extra difficulty or finding work resulting from those circumstances. A servant who has been wrongfully dismissed must use diligence to seek another employment, and the fact that he has been offered a suitable post may be taken into account in assessing the damages.”

5. Also, it is trite that a private contract of personal service cannot be specifically enforced and hence there cannot be reinstatement amounting to grant of relief for specific performance. This is the legal position in view of the relevant provisions of the Specific Relief Act, 1963 including Sections 14 and 41 thereof.

6. In my opinion, therefore, appellant/plaintiff was not entitled to the relief of reinstatement in service and other related reliefs.

7. Learned counsel for the appellant/plaintiff argued that the appellant/plaintiff in terms of prayer clause has prayed for service benefits of 15 years, however, counsel for the appellant/plaintiff could not point out to me any averments in plaint as to which is the specific service benefit which is pleaded to be a cause of action and as per which contract and which when denied by the respondent/defendant which will entitle the appellant/plaintiff to the said relief/benefit but no such averments could be pointed out to this Court. Therefore, once no cause of action is pleaded in the plaint as to any particular service benefit, except ofcourse the benefit of gratuity, and which has already been granted by the impugned judgment, and thus no other or further relief can be granted to the appellant/plaintiff.

8. There is no merit in the appeal. Dismissed.

SEPTEMBER 27, 2017
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VALMIKI J. MEHTA, J