

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

+ **RFA No.621/2017**

% **17th July, 2017**

MRS. MALINI RAJENDRAN Appellant

Through: Mr. Manav Kumar, Advocate
with Ms. Nupur, Advocate.

versus

FEDERATION OF HOTEL & RESTAURANT ASSOCIATION OF
INDIA & OTHERS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) impugns the judgment of the trial Court dated 28.3.2017 by which the trial court denied the relief of specific performance of continuation of services of the appellant/plaintiff with the respondent no.1/defendant no.1 and instead only granted three months salary as damages for illegal termination of services. The prayer clause of the plaint reads as under:-

- “(a) pass a decree in favour of the plaintiff and against the defendants directing them to pay damages of an amount of Rs.24,00,000/- as stated above for the reasons mentioned therein;
- (b) pass an order that the plaintiff will resume her work immediately and she will be paid her emoluments from April 2009 to December 2009 based on appropriate salary and allowances with applicable increments that she would have drawn from December 15th 2008 as per terms and conditions of her contract and the rules applicable in this regard.
- (c) pass an order for the defendants to pay at least 50% of the suit amount to the plaintiff or in Court before continuing with the defense of the suit.
- (d) pass an order awarding interest @ 18% on the amounts due and payable to the plaintiff from the date as and when the same became due to her from January 2007 till the date of payment.
- (e) pass an order for the costs of the suit be awarded in favour of the plaintiff and against the defendants.
- (f) pass such other or further orders, as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The letter of appointment of the petitioner dated 3.10.2006 contains admittedly a Clause 11 which entitles termination of service by three months notice or payment of three months salary in lieu thereof. Clause 11 of the letter of appointment reads as under:-

“11. Your services may be terminated at any time by giving three months notice or three months basic salary in lieu thereof. You could also resign giving a notice of three months or payment of three months basic salary in lieu thereof.”

3. Services of the appellant/plaintiff were terminated by letter dated 14.12.2006 and which letter dated 14.12.2006 reads as under:-

“FR/Admin/97/2006
Mrs. Malini Rajendran,
110, Shihka Apartments,

48 I.P. Extensions,
New Delhi 110092

Dec 14th, 2006

Dear Ms. Malini,

It is with reference to our letter no.FR/Admn/97 dated 11th December 2003 regarding contract of your services with FHRAI with effect from 15th December 2013 to 14th December 2006 for a period of three years.

In accordance to the conditions of above said contract the three years period of your services terminates on 14th December 2006.

However you are free to apply for the post after publication of the vacancy afresh.

You are requested to contact our Senior Accounts Officer Mr. Sunil Kapoor for the full and final payments. We wish you all the best in your life.

Thanking you

Sd/-

Kamal Sharma
Secretary General”

4. It may be noted that the appellant/plaintiff was appointed Assistant Secretary General (Information) of the respondent no.1/defendant no.1 originally on 28.11.1997. The appellant/plaintiff was thereafter appointed Deputy Secretary General for a period of three years vide the appointment letter dated 3.10.2006, and which appointment letter contains Clause 11 as stated above.

5.(i) Though the appellant/plaintiff pleads before this Court that the appellant/plaintiff had claimed the relief of restitution of services as also damages by alleging violation of Clause 11 of the appointment letter dated 3.10.2006, however, I have not found any cause of action specifically pleaded in the plaint by making reference

to Clause 11 of the appointment letter dated 3.10.2006, that the appellant/plaintiff has not been given three months notice or that the appellant/plaintiff has not being given three months salary in lieu of notice terminating services.

(ii) For the sake of arguments and assuming that the appellant/plaintiff had pleaded a cause of action of illegal termination of services by not being given three months notice or three months salary in lieu thereof, however, the law is well settled in view of the judgment of the Supreme Court in the case of ***S.S. Shetty Vs. Bharat Nidhi Ltd., AIR 1958 SC 12*** and in which judgment the Supreme Court has held that even if there is illegal termination of contractual services of an employee, the maximum damages which an employee as a grievance of illegal termination of services is entitled to is the salary for notice period. The relevant para of the judgment of the Supreme Court in the case of ***S.S. Shetty (supra)*** 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 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 of 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." (Chitty on Contracts, 21st Edition, Vol (2), p. 559 para. 1040)."

6. It is seen that the court below has rightly denied the relief of restitution of services and has only granted damages being three months salary by decreeing the suit for Rs.1,39,986/- along with interest at 7% per annum. It is not disputed before this Court that sum of Rs.1,39,986/- is the three months salary payable to the appellant/plaintiff.

7. I may note that it is a well settled position of law that there cannot be specific performance with respect to personal services under a private contractual appointment as per the relevant provisions of the Specific Relief Act, 1963 and an employee whose services are illegally terminated can only claim damages.

8. There is no illegality in the impugned judgment.
Dismissed.

JULY 17, 2017
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VALMIKI J. MEHTA, J