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

\+ **LPA 218/2018**

S.B. JAIN ..... Appellant

Through: Ms. Sonia A. Menon, Advocate

versus

INDIAN CO-CHAIRPERSON (SECRETARY OF GOVT OF INDIA) & ANR ..... Respondents

Through: Mr. Arun Bhardwaj, Advocate

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER

% **05.12.2018**

1. This appeal is directed against the judgment dated 15th February, 2018 passed by the learned Single Judge dismissing the Appellant's Writ Petition (C) No. 3262/2012.

2. The Appellant is aggrieved by an order dated 30th August, 2011 whereby his contractual employment as Manager (Administration and Accounts) in the Indo-French Centre for Promotion of Advanced Research (functioning under the Ministry of Science and Technology) (referred to hereafter in this order as the Respondent No.1 organisation) came to an end on account of non-renewal.

3. There were two contentions raised by the Appellant in his writ petition.

One was that in terms of the bye-laws of the Respondent No.1 organisation he should have been given three months' pay in lieu of notice of termination. The second was that the Respondent No.1 organisation had arbitrarily withheld 50% of the encashment of his Earned Leave (EL).

4. The learned Single Judge held that since the appointment was purely contractual, the Appellant could not seek further extension of his contractual service or three moths' pay in lieu of notice. It was further held that the bye-laws of the Respondent No.1 organisation do not cover the Appellant's contractual appointment. The second contention regarding the withholding of 50% encashment of EL was not discussed by the learned Single Judge.

5. This Court has heard the submissions of the learned counsel for the parties.

6. The documents on record reveal that indeed the Appellant's appointment in the Respondent No.1 organisation was contractual. He was offered the appointment on the basis that he had already superannuated from Government service. In other words, at the time of his appointment itself he was over 60 years old. The contract was for a period of two years. Although the period of two years came to an end on 30th April, 2011, he was continued as such for four more months and his appointment came to an end finally on 31st August, 2011. In other words, his contractual appointment continued till 31st August, 2011.

7. The initial letter of appointment fixes the essential character of the

Appellant's appointment as contractual. The period of the contract was also fixed. The letter further stated that for all other matters the bye-laws will apply. As far as the impugned order of the learned Single Judge finding that the appointment was purely contractual and therefore the Appellant could not seek an extension of his employment beyond 31st August, 2011 is concerned, this Court is of the view that it calls for no interference.

8. Consequently, the Court is unable to accept the plea of the Appellant that even for such contractual employment, the requirement under the bye-laws of giving three months advance notice or pay in lieu thereof would apply.

9. However, as regards the contention that 50% of the encashment of Earned Leave could not have been arbitrarily withheld, the Court finds merit in the contention of the Appellant.

10. Counsel for the Respondent No.1 sought to contend that in terms of the Rules only 50% of the encashment of EL was payable and even though the Appellant was not governed by the bye-laws the Respondent was being liberal in granting him 50% of such encashment of Earned Leave.

11. As already noticed the bye laws will apply as far as the other conditions of service including EL. Counsel for the Respondent is unable to point out under what Rule of the Respondent No.1 organisation 50% of the encashment of EL could have been withheld. The Court finds there is no justification for this action.

12. Therefore, the impugned order of the learned Single Judge is modified only to the extent of directing that the Respondent No.1 organisation will pay to the Appellant the remaining 50% of the EL i.e. a sum of Rs. 35,000/- within a period of four weeks from today together with simple interest @ 6% p.a. from 1st September, 2011 on the said sum till the date of payment. The failure to make the said payment within the tie stipulated will make the Respondent No.1 liable to pay enhanced interest at 9% p.a on the said sum for the period of delay.

13. The appeal is disposed of in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 05, 2018
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