

Sr. No.204

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****RSA-4963-1999 (O&M)****Date of Decision: 17.03.2023**

Indian Institute of Technology, Delhi and others

...Appellants

Vs.

Kuldip Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:** Ms. Sukhmani Patwalia, Advocate or appellants.

Mr. Nipun Mittal, Advocate for respondent.

ARUN MONGA, J.

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, defendants(appellants herein)are in second appeal before this Court assailing learned trial Court judgment and decree dated 31.08.1994, as upheld by learned First Appellate Court vide its judgment and decree dated18.09.1998.

3. Plaintiff/ respondent filed a suit at District Court, Ludhiana challenging order dated 09.12.1986 signed and issued by defendant No.3 (appellant No.3 herein)- Deputy Registrar (Admn.), whereby he was removed from service. He sought declaration to the effect that he is deemed to be in continuous service and thus entitled to all arrears and other consequential benefits.

4. Briefly stated facts, as noticed by Courts below are that plaintiff joined the appellant-Institute on 31.12.1976 as a Senior Technical Assistant. His services were regularized in the Department of Physics w.e.f. 01.03.1978. During November-1984 riots, plaintiff and his family were uprooted as his house was burnt and belongings were looted. Consequently, he lodged FIR in Police Station, Ashok Vihar, Delhi where he recorded all the evidence. However, the administration merely issued him a cheque in the sum of Rs.1,000/- as compensation.

4.1. Plaintiff in those circumstances submitted several representations for allotment of proper accommodation in IIT campus but to no avail.

4.2. He became mentally disturbed due to entire tragic mis-happenings. He then applied for one year's leave on extraordinary basis vide his application dated 04.07.1985 w.e.f. 22.07.1985, which was recommended by the Head of Department and Committee of Professors. In the meantime, on 30.07.1985, plaintiff got a telephonic message about his mother's serious illness at Ludhiana. He had to rush to Ludhiana after getting his leave duly recommended from the Head of Department. During his journey, he also fell ill. Due to these extraordinary circumstances of plaintiff, he shifted with his family to Punjab. He duly informed all these facts to the Head of Department. But, the Department issued him a charge-sheet and ordered departmental enquiry. Plaintiff could not appear before the enquiry officer due to his illness. Ultimately, vide office order dated 09.12.1986, his services were terminated.

5. Upon notice, defendants appeared and filed written statement and opposed the claim of plaintiff on various grounds. The jurisdiction of the Court at Ludhiana was strictly opposed. It is alleged that Civil Court had no jurisdiction to try the suit. Suit was barred as an efficacious remedy under the Institute of Technology Act, 1961 is provided for. Plea of estoppel was also taken saying that plaintiff went on unauthorized leave. Plaintiff's application for one year's leave was rejected vide order dated 01.08.1985. Thereafter he was duly called upon by defendants to join the duty and to explain the misconduct. Instead, he filed frivolous representations to defendants and started raising false pleas therein. It is alleged that despite notice plaintiff did not appear before the Enquiry Officer. It is not disputed that plaintiff applied for extraordinary leave for one year. However, plaintiff was duly informed that his leave had not been sanctioned. Accordingly, he was called upon to join the institution immediately.

6. Replication was filed by plaintiff denying all these averments made in the written statement while those in the plaint were reiterated.

7. Based on the rival pleadings, following issues were framed:

1. Whether the impugned order dated 09.12.1986 passed by defendant No.3 removing the plaintiff from service is illegal, arbitrary, without jurisdiction etc. as alleged?OPP.
2. Whether the plaintiff is entitled to the declaration prayed for?OPP.
3. Whether the Court at Ludhiana have no jurisdiction to try the suit?OPD.
4. Whether the civil Courts have no jurisdiction to try the suit?OPD.
5. Whether the suit is not maintainable in view of preliminary objections No.1, 3 and 5 in the written statement? OPD.
6. Whether the suit is bad for non-joinder of necessary parties and mis-joinder of parties?OPD.
7. Whether the plaintiff is estopped by his act and conduct from filing the suit?OPD.
8. Relief.

8. Parties to the suit adduced their oral as well as documentary evidence in support of their pleadings to discharge their respective onus as per the issues, *ibid*.

9. On appraisal of evidence vis-à-vis pleadings, all issues were decided in favour of plaintiff and against defendants. Consequently, the suit of plaintiff was decreed by the Ld. Trial Court leaving the parties to bear their own costs. However, it was held that it would be option of defendants to treat the period of one year recommended for extraordinary leave under Rule 19 of Scheduled D as leave without salary.

10. Aggrieved, defendant-appellants preferred first appeal which was dismissed with costs by learned First Appellate Court, resulting in instant Regular Second Appeal before this Court.

11. Learned counsel for appellant/defendants would argue that authority to reject the extraordinary leave application and the authority to pass order of removal from service were all the same. Therefore, the objection taken by plaintiff and allowed by both the Courts below, is factually incorrect. All the three orders had been passed by Deputy Registrar with the approval of the Director. She would further submit that as per document/communication (Annexure A-1), Deputy Registrar was delegated the powers and even for the sake of argument it is assumed that order was

without jurisdiction, Section 36 of the Institutes Technology Act, 1961 (*hereinafter referred to as 'Act, 1961'*) would come into play which envisages that no action of the body set up under the Act/Statute can be invalidated only on the ground of irregularity. The relevant part of Section 36 is as under:-

"36. No act of the Council, or any Institute or Board or Senate or any other body set up under this Act or the Statutes, shall be invalid merely by reason of--

- (a) any vacancy in, or defect in the constitution thereof, or*
- (b) any defect in the election, nomination or appointment of person acting as a member thereof, or*
- (c) any irregularity in its procedure not affecting the merits of the case"*

The contention is that it is with the approval of the Director that the impugned order of removal from service was passed, and the Director was also the competent authority to issue the same, by virtue of the provisions contained in the Statutes of the Indian Institute of Technology, Kharagpur/ Bombay/ Madras/ Kanpur/ Delhi.

11.1. Preliminary objection by learned counsel for Appellant/Institute as was also the case before both the Courts below, is that the present dispute had to be necessarily referred to Arbitration by virtue of Section 30 of the Act, 1961, which is reproduced herein below:

"30. (1) Any dispute arising out of contract between an Institute and any of its employees shall, at the request of the employee concerned or at the instance of the Institute, be referred to a Tribunal of Arbitration consisting of one member appointed by the Institute, one member nominated by the employee, and an umpire appointed by the Visitor.

(2) The decision of the Tribunal shall be final and shall not be questioned in any court.

(3) No suit or proceeding shall lie in any court in respect of matter which is required by sub-section (1) to be referred to the Tribunal and Arbitration.

(4) The Tribunal of Arbitration shall have power to regulate its own procedure.

(5) Nothing in any law for the time being in force relating to arbitration shall apply to arbitrations under this section."

11.2. *Qua* jurisdiction of Civil Courts at Ludhiana, learned counsel for appellants relies upon the judgment of this Court in ***Gurnam Singh vs. Union of India (P&H) 1994(3) SCT 386*** and that of the Apex Court judgments in ***Eastern Coalfields Ltd. vs. Kalyan Banerjee, (SC) 2008 (2) SCT 349*** and ***V.G. Jagdishan vs. M/s Indofos Industries Limited, C.A. No.2976 of 2022.***

11.3. She would further submit that the Director is empowered to pass the order of removal under Statute 13(9)(b) of the Act, 1961. Relevant of statute *ibid* is reproduced as under:

“13(9)(b) The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on any member of the staff:

- (i) Censure*
- (ii) withholding of increments or promotion*
- (iii) recovery from the whole or part of any pecuniary loss caused to the Institute by negligence or breach of orders;*
- (iv) reduction to lower service, grade or post or to a lower time-scale or to a lower stage in a time-scale;*
- (v) compulsory retirement;*
- (vi) removal from service which shall not be a disqualification for future employment under the Institute;*
- (vii) dismissal from service which shall ordinarily be a disqualification for future employment in the Institute.*

No order imposing on any member of the staff any of the penalties specified at (iv) to (vii) above shall be passed by any authority subordinate to that by which he was appointed and except after an enquiry has been held and the member of the staff has been given reasonable opportunity of showing cause of the action proposed to be taken in regard to him.

No order imposing on any member of the staff any of the penalties specified at (i) to (iii) above shall be passed by any authority subordinate to that by which he was appointed and unless the member of the staff concerned has been given an opportunity to make a representation to the Appointing Authority.”

11.4. Learned counsel for appellants further submits that proper recourse for the plaintiff/respondent, as per the provision of Act, was to file an appeal as is stipulated under Statute 13(10) of Act, 1961 which is reproduced herein below:

“(10). A member of the staff aggrieved by any order imposing penalty passed by the Director against him shall be entitled to prefer an appeal to the Board against the order and there shall be no further appeal from the decision of the Board and member of the staff aggrieved by any order passed by the Board against him inflicting a penalty on him shall be entitled to prefer an appeal to the Visitor against the order,

No appeal under this sub-statute shall be entertained, unless it is submitted within a period of three months from the date on which the appellant receives a copy of the order appealed against, provided that the Appellate Authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant has sufficient cause for not submitting the appeal in time."

11.5. She would further submit that it is evident from facts of the case that plaintiff was habitual absentee from duties and had in fact settled in Ludhiana. It is patent from a perusal of the record that the leave applications received from the employee were never sanctioned. Schedule D of the IIT Delhi pertains to Leave Provisions.

11.6. As per the learned counsel for appellants, therefore, it is evident, that leave has to be applied for and the same has to be sanctioned before the employee can proceed on leave. In the present case, plaintiff had already proceeded on leave, even after knowing very well that his application for leave was rejected by the competent authority. The institute had continuously been informing and requesting the employee to rejoin duty but the employee failed, and consequently a fair and proper inquiry was conducted. Plaintiff/employee was also repeatedly requested to supply a medical certificate from a government hospital but vide Ex. P-44,45, appellant/defendants were informed by plaintiff that the treatment of government hospital did not suit him and plaintiff/employee clearly had shown no regard for the instructions issued by the Institute.

11.7. Further, learned counsel for appellants argued that leave cannot be demanded as a matter of right, it is a discretion of the employer. The employee can only proceed on leave after obtaining sanction and the same has not been done in the present case. Plaintiff/employee had proceeded on leave without sanction in the year 1985 and had not worked with the institute since then. It was only in the year-1998 that plaintiff/employee for the first time came to the institute and requested for rejoining. There is no proof or pleading by plaintiff/employee that he was not gainfully employed with another establishment or profession during the period of

absence. It is patent that he had shifted base and had no intention of rejoining and the present litigation is only being agitated as a measure of gamble.

11.8. Even otherwise, whatever is admissible to plaintiff/employee by virtue of his service with the institute had already been deposited before the Executing Court. The employee had not even served appellant/institute ever since 1985 till today and neither had he approached appellant/institute before the issuance of order for his removal from service to take him back in service. In order to further substantiate this argument reliance is being placed on judgment rendered by the Apex Court in Civil Appeal No.5390 of 2019 titled as "*Chief Regional Manager, United India Insurance Company Limited v. Siraj Uddin Khan*"(SC).

11.9. Learned counsel for appellants would further submit that plaintiff is not entitled to any interest in view of the statutory provision under Order 24 Rule 3 of the Code of Civil Procedure.

12. *Per contra*, learned counsel for plaintiff/respondent submits that the concurrent findings of learned Courts below have been rendered after due appreciation of evidence of record and no fault can be found with the approach of learned Courts below.

13. I have heard learned counsel for parties and perused the judgments of both the Courts below.

13.1. The question that arises for adjudication is whether both the courts below committed manifest error in overlooking the material evidence on record and, mis-appreciated and misread whatever evidence was noticed which resulted in returning perverse and wrong findings, not sustainable in law ?

13.3. The answer to the above question is in affirmative. Let us see how.

14. Learned First Appellate Court, *inter alia*, observed as under while dismissing the appeal filed by appellant/defendants:-

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11. I have heard the Ld. counsel for the parties and have carefully gone through the record. The first and foremost argument raised by the Ld. counsel for the appellant in appeal was that civil courts at Ludhiana did not at all have the jurisdiction to entertain and try the present suit and the jurisdiction to do so has been wrongly assumed by the Ld. lower court. It was contended by him in this context that the plaintiff was admittedly employed at Delhi. His place of residence was Delhi, the enquiry was conducted at Delhi, he was paid his salary at Delhi and that nothing in connection with the affairs of the services of the plaintiff with the defendants had been done at Ludhiana. That only the letter of termination of the services of the plaintiff was sent to the plaintiff at Ludhiana address and the receipt of said letter of termination of services at Ludhiana will not bestow the jurisdiction upon the court at Ludhiana to entertain and try the suit. In this context he relied upon two authorities which are AIR 1974 Himachal Pradesh S. Mittal Vs Bar Council of India. and others and AIR 1969 Calcutta 224(V 56C 39), Ujjal Talukdar Vs. Netai Chand Koley. In the authority (Ujjal Talukdar Supra) it has been held that everything which, if not, proved gives the defendant an immediate right to judgment must be part of the cause of motion. Cause of action does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. Evidence of a fact should not be confused with the fact itself. Even an infinitesimal fraction of a cause of action will be part of the cause of action and confer jurisdiction on the court within the territorial limits of which that little occurs. Where the entire dispute over a Cricket Match was occasioned, discussed and settled in Calcutta, and where the plaintiff through his agent was apprised of the decision in Calcutta, mere fact that the decision was conveyed to the Plaintiff club by a letter received by the club at Sealdah will not take the cause of action to Sealdah and give Sealdah court jurisdiction. In the authority of S.S.Mittal supra one Advocate was removed from the rolls of Bar Council of India at Delhi and the copy of order was sent to him at Simla. It was held that Cause of action arises at Delhi and not at Simla because the order of Bar Counsel of India was passed in the presence of the petitioner at Delhi and it was necessary to serve the copy of the order on him for being effected.

12. These authorities are distinguishable from the facts of the case before us. In the authority S.S.Mittal supra the order was passed in the presence of petitioner on April 30, 1972 at Delhi. The presence of the petitioner was noted at the top of the order and that not that the order was passed in the presence of petitioner was not refuted in the writ petition. The order had taken effect as soon as it was passed and it removed the name of the Advocate from the rolls of the Advocates immediately. It was found that it was not necessary to accomplish that end to send a copy of the order to the petitioner and the order was complete and final order and after pronouncing it, the Bar Council of India had no power to make a different order. Unlike that in the present case, the order terminating the services of the plaintiff was admittedly not passed in his presence. He had not participated in the proceedings of the domestic enquiries. Those proceedings were conducted ex parte against him. No circumstances has been placed a file to conclude that prior to the receipt of the order terminating the services of the plaintiff

by him at Ludhiana, he did have the knowledge of the fact that his services stood terminated. That order admittedly was received by the plaintiff at Ludhiana and it is not disputed that the same was sent to the plaintiff at Ludhiana address. Therefore, the defendant Institute cannot successfully dispute the Jurisdiction of the civil court at Ludhiana to entertain and try the present suit because in that context a part of the cause of motion can definitely be said to have been arisen to the plaintiff at Ludhiana. The Ld.Counsel for the plaintiff/respondent in this context had relied upon the authority reported as 1981(2) SLR 475 Secretary, Home Department Govt. of Maharashtra, Sachivalya, Bombay Vs. Bansidhar and others in which it has been held that service of the order of termination of services is necessary cause of action and the order of dismissal is effective on the date of service only and the suit can be filed at the place where the order of dismissal is served. In this authority, reliance has also been placed upon the authority of the Apex Court reported as the State of Punjab Vs. Amar Singh AIR 1956 SC 1313 wherein it is held that "an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority, such an order can only be effective after it is communicated to the officer concerned or it otherwise published. In the peculiar facts and circumstances of the present case the part of the cause of action appear to have arisen at Ludhiana where the order terminating the services of plaintiff was received by him and the civil court at Ludhiana thus did have the Jurisdiction to entertain and try the suit.

12. The next contention advanced by the learned counsel for the appellant was that the jurisdiction of the civil court to try the suit of the present nature was barred under Section 30 of the Institute of Technology Act. This section is as under;-

(1) Any dispute arising out of contract between an Institute and any of its employees shall at the request of the employee concerned or at the instance of the Institute, be referred to a Tribunal of Arbitration consisting of one member appointed by the Institute, one member nominated by the employee, and an umpire appointed by the Visitor.

(2) The decision of the Tribunal shall be final and shall not be questioned in any court.

(3) No suit of proceedings shall lie in any court in respect of matter which is required by sub-section (1) to be referred to the Tribunal of Arbitration.

This argument appeared to be attractive at the outset but could not stand the test of scrutiny.

13. The statutes provides three types of employments:

(i) Permanent employees under statute 13;

(ii) Temporary employment under Section 14;

(iii) Employees on statute contract

Section 30 of the Institute of Technology Act refers to disputes arising out of contract between Institute and any of its employees. It does not refer to the others, i.e. the disputes between Institute and temporary employees and between the Institute and Permanent employees.

14: The third contention advanced by the Ld counsel for the appellant was that the education institutions are industries and the employers are workmen and the jurisdiction of the civil court was thus barred. In this context, he placed reliance upon the authority reported as AIR1975 Supreme Court 2238 The Premier Automobiles Ltd. Vs Kamlakar Shantaram Wadke and others wherein the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute have been stated as under;-

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the Civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the Industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

It could not be shown by the Ld. Counsel for the appellant that the dispute of the present case was industrial dispute relating to the enforcement of a right or an obligation created under the Act. It has not been specifically contended anywhere in the pleadings that the plaintiff was a workman as defined in Section 24 of the Industrial Disputes Act. The present case can safely be covered under Principle(2) above. Even if it is presumed an industrial dispute, arising out of a right or liability under the general common law, the jurisdiction of civil court was thus not barred, but it was alternative and it was to be elected by suitor concerned to choose as to whether he was to have his remedy in the civil court or before the Tribunal under the Industrial Dispute Act. The defendants could not have any say in the matter. The Ld.counsel for the plaintiff/respondent in this context relied upon a Full Bench authority of our own High Court reported as 1982 SLJ (P&H)395' Sukhi Ram vs State of Haryana wherein it has been held that Civil Court has Jurisdiction to entertain a suit by workman in connection with an industrial dispute arising out of the right or liability under the general or common law and not under the Act, if no steps had been earlier taken by him to resort to the remedy under the Industrial Disputes Act.

15. It was lastly contended by the Ld.counsel that contract of personal service cannot be specifically enforced. He has placed reliance Upon 1991 CCC 853 SC Nandganj Sihori Sugar Co. Ltd. vs. Badri Nath Dixit and others. I have gone through this authority. The same cannot have the strict application in the present case. It is not the case where some person had just been sponsored for appointment which was not granted

and that person had filed a suit for injunction compelling the company to give appointment. On the other hand, it is the case where the plaintiff was appointed as permanent employee of the defendants and had served for a suitable length of time and where the services of the plaintiff have been terminated by the defendant and that order of termination has been challenged on the ground that the same was not passed as per the provisions of law.

16. In view of the above discussion, there is no life in the present appeal and the same is dismissed with costs. Decree sheet be prepared.”

15. Defending the judgments and decree passed by the Courts below, learned counsel for respondent would argue that no fault can be found with the concurrent findings rendered therein and therefore, the instant second appeal deserves to be dismissed. He would further canvass that neither there is any perversity nor illegality warranting interference in exercise of appellate jurisdiction of this Court vested under Section 41 of the Punjab Courts Act read with Section 100 of CPC. He submitted that the case law cited by learned counsel for appellants is not applicable in the facts of the present case and *per contra* relied on what has already been referred by the First Appellate Court viz. 1981(2) SLR 475 and AIR 1966 SC 1313. No new arguments were addressed by him other than reiteration of the stand taken before the courts below. He would strongly urge that suit has been validly allowed and thus instant appeal be dismissed with costs.

16. Having had the assistance of learned counsels and after perusal of record, I am unable to persuade myself to agree to the findings *qua* issue Nos.1 & 2 returned by Ld. Trial Court. Same mistake seems to have been perpetuated by Ld. First Appellate Court as would be borne out from discussions herein above.

17. Before I advert to the same, I may also hasten to add here that it appears that the Courts below got rather over-swayed with the assertion of the plaintiff that he was a victim of 1984 riots and having lost his house and all belongings to the fire caused by rioters coupled with his further assertion that he was denied residential accommodation in IIT Campus and that since he was suffering from extreme depression, he had no choice but to shift to Ludhiana. Therefore, he was fully

justified in the peculiar circumstances *qua* his defense of his not joining the departmental proceedings and/or remaining absent from the duty. Even though there is nothing on record other than self-serving assertion in his pleadings *qua* sufferings undergone by plaintiff, claiming himself to be a victim of 1984 riots, but, be that as it may, giving him benefit of doubt on his pleadings, I am of the view that sympathy should not result into an over kill leading to the plaintiff's undue enrichment for remaining absent from duty. Even otherwise, what was and is really required to be seen is whether there was any administrative lapse either on procedure or violation of any provision of service law applicable on the plaintiff while passing the impugned order of termination of his services and that itself seems to have been lost sight of by both the Courts below.

18. Ld. Trial Court *inter alia* returned the findings that the inquiry report is liable to be rejected since the same has been rendered without there being any proper opportunity for the plaintiff to adduce evidence. That apart, order of termination of services of plaintiff dated 09.12.1986 was since not passed by the competent authority is, therefore, *non est* and nullity in law from its very inception. The same logic seems to have been accepted by the Ld. First Appellate Court. However, both the aforesaid findings of the Courts below, when tested on the touchstone of the applicable law and the evidence on record, are perverse and are, therefore, not sustainable.

18.1. Adverting to the finding *qua* competent authority having not passed the impugned order, reference may be had to the conceded position taken by plaintiff himself as per his legal notice dated 24.12.1986 (Ex.D/32), wherein he stated that it is the Director of the IIT who is the appointing authority. Accordingly, competent authority for passing the order of removal/termination from service was Director of IIT. Pertinently, the appointment letter (Ex.D/2) had also been signed and issued by the Deputy Registrar (Admn.) of IIT, a person much lower in rank than the Director. As against the same, the order for termination of services of plaintiff dated 09.12.1986 (Ex.D/30) clearly reflects that the same was issued by the order and in

the name of Board of Governors of the Institute, an authority higher than the Director. Apart therefrom, charge-sheet dated 23.01.1986 (Ex.P/5) contains a specific recital that the same has also been issued on the orders of Director of IIT. The charge-sheet clearly envisaged that reply thereof, if any, be filed within 15 days of its issue. Plaintiff, on his own volition chose not to file any reply.

18.2. In the aforesaid premise, the department appointed an inquiry officer on 06.02.1986 vide Ex.P/5. Order dated 06.02.1986 for appointment of the inquiry officer contains a specific recital that the Director had appointed the Inquiry Officer and the same was issued by the order and in the name of the Director.

18.3. Vide his report dated 17.07.1986, the inquiry officer recorded detailed facts showing the plaintiff's failure, despite repeated notices and adjournments, to attend the inquiry proceedings and held that the absence of the plaintiff was willful and without prior sanction of leave and valid reasons that the charges framed against him in charge-sheet had been proved against him *ex-parte*. The relevant part of the inquiry report is as under:

"I have further examined the records and documents submitted to me by the presenting officer Sh. Y.K.Sharma. The records examined by me are as under:

- 1. Office letter No. IITD/E-II/85/5988 dated 1.8.85.*
- 2. Office letter No. IITD/E-II/85/7197 dated 16.8.85*
- 3. Office letter No. IITD/E-II/85/ 10127 dated 14.11.85.*
- 4. Office letter No. IITD/E-II/85/10896 dated 18.12.85.*

I have also examined the witness of Sh. Darshan Lal, Assistant (E-II) who confirmed having issued the above letters to Sh. Kuldeep Singh and despite issue of these letters he remained absent in an unauthorized manner.

*On examining the documents and enquiries from witness, it is proved that the absence of Kuldeep Singh STA is willful and without prior sanction of leave and for valid reasons. The charges framed against him vide memo No. IITD/E-II/85/868 dated 23.1.86 proved on inquiry held against him *ex parte*. Shri Kuldeep Singh has failed to maintain proper conduct, thereby contravening the provisions of para 3(a) of Conduct Rules of the Institute."*

18.4. After the inquiry report was rendered, a notice dated 18.08.1986 (Ex.D/27) was issued to the plaintiff stating, *inter alia*, that on a careful

consideration of the inquiry report, the Director had agreed with the findings of the Inquiry Officer, held that the articles of charge had been proved and that the Director had, therefore, provisionally come to the conclusion that the plaintiff was not a fit person to be retained in service and so the Director proposed to impose on him the penalty of removal from service which shall not be a disqualification for future employment under the Institute. The plaintiff was, thereby given an opportunity of making representation against the same showing cause within 15 days on the penalty proposed.

18.5. Specific recitals were recorded in Ex.D/27 that the same was issued by the order and in the name of the Director. The plaintiff sent reply dated 10.09.1986 Ex. D/28. It was stated therein that the plaintiff never absented from duty; he had applied for leave which had been recommended by his Head of Department and he was entitled to the leave of the kind due; there was no cause for the plaintiff to remain absent from duty for any advantage; by the circumstances his mental and physical position was such that it was not possible for him to perform the duties and that the domestic enquiry against him was illegal as enquiry against a sick person is void; he could not give reply to the charge-sheet, cross examine the witnesses and give his defence. Order dated 09.12.1986 (Ex D/30) was then passed stating inter alia that the plaintiff's representation had been considered by the Chairman, Board of Governors; that the facts adduced therein were considered not justified to retain the plaintiff in service due to the following reasons:

- i) He left office without prior permission/sanction of leave;
- ii) He failed to produce medical certificate from the Civil Surgeon of a Government Hospital in support of his ill health as asked for;
- iii) He failed to appear before the Inquiry Officer either in person or through his accredited representative in spite of the notices served on him by the Inquiry Officer.

The order further states that, therefore, the B.O.G. (Board of Governors) in exercise of the powers conferred on it under Statute 13(9) of the Institute thereby

imposed on the plaintiff the penalty of removal from service from the date of the order. There is a further recital recorded in the order that the same was issued by the order and in the name of the B.O.G.

18.6. It may be also noted here that in para 6 of the plaint, the averment is that the plaintiff received a chargesheet and denied the charges as the same were baseless and wrong. He did not specifically assert if he had actually submitted any explanation/reply to the chargesheet. In para 6 on merits of the written statement, the defendants categorically pleaded that the plaintiff did not submit any reply to the charge-sheet. Again, in replication, the plaintiff simply stated that para 6 of the written statement was wrong and denied, while that of the plaint was correct and reiterated. Here too he did not specifically state if he had actually submitted any explanation/reply to the chargesheet. It is thus implicit from the pleadings that no explanation/reply to the chargesheet was submitted by the plaintiff. That apart, no such reply/explanation is shown on record.

19. It is thus abundantly clear from the perusal of the relevant orders themselves that the orders for the issuance of charge sheet against the plaintiff; appointment of the Inquiry Officer; acceptance of/agreement with the report of the Inquiry Officer and the issuance of show cause notice to the plaintiff for the proposed penalty of removal from service were actually passed by the Director of the Institute while the order imposing penalty of the plaintiff's removal from service was actually passed by the Board of Governors of the Institute. That factual position would not change merely because these orders were authenticated and issued under the signatures of their respective delegates. The Director being the plaintiff's appointing authority was competent to pass orders for the issuance of charge sheet against him; for appointment of the Inquiry Officer; for acceptance of/agreement with the report of the Inquiry Officer and for the issuance of show cause notice for the proposed penalty of removal from service. The Board of Governors of the Institute

being an authority higher than the Director was also competent to pass the order imposing penalty of the plaintiff's removal from service.

As regards the sanction of one year leave sought by the plaintiff, Schedule 'D' of Act, 1961, provision Nos.4 & 11 thereof being relevant are reproduced herein below:-

"4. Authority empowered to sanction Leave

(1) Applications for leave shall be addressed to the Board by the Director and to the Director by the other members of the staff.

(2) Leave may be sanctioned by the Director or by a member of the staff to whom the power has been delegated by the Director.

(3) The Board may sanction leave to the Director, but the Director can avail himself of casual leave on his own authority.

11. General

(1) Leave should always be applied for and sanctioned before it is taken, except in cases of emergency and for satisfactory reasons.

(2) Continuous temporary service followed by permanent) service without any break shall be included in permanent service for the purpose of computation of leave."

20. Perusal of the above reflects that leave may be sanctioned either by the Director or by the Member of the Staff to whom power has been delegated by the Director. In the instant case, leave application of the plaintiff was rejected by the Deputy Registrar (E.II) being a delegatee of the Director. Plaintiff was duly informed vide an office order dated 01.08.1988 (Ex.D/6) issued/conveyed by the Deputy Registrar (E.II) with prior approval of Deputy Director (Admn.). No illegality, therefore, can be attributed *qua* administrative procedure adopted in that regard.

21. Pertinently, even after the rejection of leave application, the plaintiff was shown all fairness to obviate any unintended harshness, inasmuch as, vide an office letter dated 14.11.1985 (Ex.D/14), he was asked to produce medical certificate from a competent medical officer of the government i.e. any Civil Surgeon, Government Hospital. Instead of complying with the same, plaintiff rather adopted an evasive

attitude taking a highly belated defense vide his letter dated 10.07.1986 (Ex P-44) that treatment from Government hospital did not suit him and that the Government hospital was far from his residence. To be noted that plaintiff at the relevant time was residing in Ludhiana. It is rather intriguing and unacceptable to say that there would be no government hospital in and around area of his residence. Further, all that the plaintiff was required was to give a certificate the Doctor of a Government Hospital certifying his current medical condition. That did not necessarily mean that he must also undergo regular treatment at the Government hospital.

22. As regards there being no evidence of defence adduced by the plaintiff, the same is also squarely attributable to him. Not only he did not give any reply to the charge-sheet, he even preferred to abstain from the inquiry proceedings. As a necessary consequence, inquiry officer had no choice but to hold the enquiry *ex-parte*.

Based on the evidence/ record produced before him, as mentioned in the report extracted above, the Inquiry Officer held that charges against the plaintiff stood proved. The finding of the plaintiff's willful absence from duty is thus based on valid evidence produce by the department and was recorded after having taken due caution of complying with principles of natural justice. It is not that the plaintiff did not respond to the office letter asking him to produce medical certificate from government hospital, but in reply he took a highly belated defense that treatment from medical hospital did not suit him. His said defense was found to be not worthy of belief, and rightly so, by the inquiry officer.

23. In my opinion, there was sufficient and reliable evidence on record proving the charge of plaintiff's willful absence from duty without sanction of leave. As an upshot of my discussion above, I am unable to persuade myself with the view taken by the learned trial Court that it was a case of no evidence in support of the charges. Ld. Trial Court fell in manifest error by mis-appreciating the evidence on record and holding that it was a case of no evidence in support of the charge and thus committed material irregularity to hold that impugned order of removal from service

was not sustainable. Same illegality has been perpetuated by Ld. First Appellate Court as it has not given any reasons of its own or recorded any discussion while upholding the finding of the Ld. Trial Court on issue No.1. As a result, the findings returned by the learned trial Court on issues No.1 and 2 as affirmed by the learned First Appellate Court are reversed.

24. Findings *qua* issue Nos.3 to 7 are based on cogent reasons already given by the Courts below and do not warrant any interference. Both the Courts below duly considered the rival contentions and repelled those of the appellants by recording sound and sufficient reasons based on record and applicable law. I am inclined to agree with the same. There seems no substance in the submission that the said findings are based on conjectures and surmises and as has been canvassed by learned counsel for appellants. I may also like to add here that the over-emphasis on the suit being not maintainable in the light of arbitration clause is completely misplaced. Trite law it is, that any objection *qua* arbitration is to be taken at the very threshold of the suit proceedings before preferring written statement to the plaint. Same cannot be permitted to be raised later on and decided after adducing threadbare elaborate evidence of both sides and then relegating the matter to arbitration. Such a recourse would frustrate the very purpose of speedy remedy of arbitration proceedings. That apart, as already noted, other reasons given by both the Courts below while rejecting the said objection do not warrant any interference.

25. As an outcome of reversing the findings *qua* issue Nos.1 & 2, the appeal is allowed, the impugned judgment dated 31.08.1994 and 18.09.1998 respectively passed by the learned trial Court and the learned First Appellate Court are set aside, the order of removal of plaintiff from service is upheld and suit is dismissed.

26. However, given that plaintiff pleads himself to be a victim of 1984 Delhi riots, though there is no evidence on record in support thereof, but yet, giving benefit of doubt, a sympathetic view *qua* his service benefits already conferred on him ought to be taken to avoid any undue hardship at this stage of his life. At the relevant

time of his removal from service, plaintiff was working on Group ‘C’ post. As per service record, his date of birth is 03.06.1941. Had he remained in service, he would have superannuated from service on attaining the age of 58 years in the year 1999. In this aspect, it may be noted that the instant second appeal was admitted in this Court vide order dated 17.02.2003 i.e. after the date of superannuation of the respondent. At that time, request for stay of impugned order was specifically declined. Later on, vide an order dated 11.12.2003 execution proceedings were stayed. Resultantly, in all likelihood, the plaintiff would have been given the benefit of remittance of his salary upto the time when execution proceedings were stayed and, other dues or part thereof during pendency of second appeal. Be that as it may, in view of the order of his removal having been upheld, needless to say that he was/is not legally entitled to seek any such consequential benefits merely because the second appeal remained pending before this Court. His present age is about 82 years and his incapacity to earn and refund the said benefits are now *fate accompli*. In view of the peculiar facts and circumstances of the case and applying the principles enunciated by the Apex Court in **State of Punjab and others versus Rafiq Masih AIR 2015 (SC) 696** it is directed and made clear that any fortuitous financial benefits of service already paid to plaintiff by the department shall not be recovered from him pursuant to the upholding of the order of his removal from service and on the ground that he has not rendered any service for the corresponding period.

27. Appeal is thus allowed in the above terms and the suit filed by the respondent is dismissed.
28. Pending application/s, if any, shall also stand disposed of.
29. No order as to costs.

(ARUN MONGA)
JUDGE

March 17, 2023
ashish

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No