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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 23.03.2023

Pronounced on: 12.05.2023

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RFA 433/2015 and C.M. Nos. 21794/2018 & 3340/2019

T S MOKHA

..... Appellant

Through: Mr. D.D. Singh and
Ms. Seerat Deep Singh,
Advocates.

versus

**ANSAL PROPERTIES & INFRASTRUCTURE LTD
& ANR**

..... Respondents

Through: Mr. Nishant Datta,
Mr. Pradeep Bhardwaj &
Mr. Chirag Rathi, Advocates.
Mr. Rajesh Kumar, SC, EPFO
and Mr. Kulraj Bhushan
Sharma, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The appellant (original plaintiff) has filed the instant Regular First Appeal under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 against the judgment and decree dated 21.02.2015 ("*Impugned Judgment*") passed by the learned Additional District Judge-06 (West), Tis Hazari courts, Delhi in

Suit No. 106 of 2004 titled as '*Shri T.S. Mokha Vs. Ansal Properties & Industries Ltd. and Anr*'.

2. The appellant had instituted the suit seeking a declaration that the letter dated 19.08.2003 (**Ex. P-19**) through which his services were terminated was illegal. The learned Trial Court, vide the Impugned Judgment, dismissed the suit and held that the appellant is not entitled to reinstatement or any future salary.
3. Before examining the relevant facts for the disposal of the present Appeal, this Court deems fit to dispose of CM No.3340/2019 wherein the appellant is seeking the change of name of Respondent No.1 from 'Ansal Properties & Industries Ltd.' to 'Ansal Properties & Infrastructure Ltd.'. This Court issued notice to the Respondents on 23.01.2019 but the Respondents have failed to file any response to the said Application. A perusal of the record shows a Board resolution dated 17.12.2004 filed by the Respondent Company indicating the change of name. Hence, the said Application filed by the appellant is allowed. The name of the Respondent is changed from 'M/s Ansal Properties & Industries Ltd.' to 'M/s Ansal Properties & Infrastructure Ltd.'. The amended memo of parties is taken on record.

FACTS RELEVANT FOR ADJUDICATION OF THE PRESENT APPEAL

4. The appellant joined the Respondent Company in the capacity of Deputy General Manager (A&P) *vide* appointment letter dated 30.05.1986 (**Ex.P-7**). On 31.01.1997, the appellant

superannuated on attaining the age of 58 years in accordance with Clause 10 of the said appointment letter and Rule 14 of the Service Rules (**Ex. DW1/P2**) of the Respondent Company.

5. Allegedly, the appellant was provided a fresh contractual appointment by the Respondent Company *vide* letter dated 07.02.1997 (**Ex. P-18**). Relevant portion of alleged extension letter dated 07.02.1997 has been reproduced herein below:

“We are pleased to inform you' that you will be retired from the service of this company after completion of your 70 years of age and as such, clause 10 of your appointment letter dated May 30, 1986 stands amended to this extent.”

6. On 19.08.2003, while serving as a Vice President (P&A), the appellant received a communication from the Respondent Company in the form of a letter dated 19.08.2003 (**Ex. P-19**), stating that the company had decided to retire the appellant from the service effective from the same date. At the time of retirement, the appellant was drawing a monthly emolument of Rs. 67,400/- which included a gross salary of Rs. 54,400/- *per mensem* and other benefits such as LTC, medical, cellphone etc. Relevant extract of the letter dated 19.08.2003 (**Ex. P-19**) is produced below:

“SUB: RETIREMENT

It has been decided to retire you from the service of our Company with effect from 19th August 2003. Accordingly, you will stand relieved of your responsibilities on the afternoon of the aforesaid date.

You are now, requested to hand over charge of your duties and Company's property, if any, to the concerned authorities and submit the required clearance certificate from all

concerned enabling us to advise the Accounts Department to settle your account.

As regards your PF, you are advised to approach the concerned authorities directly.

We placed on record our appreciation of the services rendered by you to the Company and wish you a very happy long life.

For ANSAL PROPERTIES & INDUSTRIES LTD.

(AMITAV GANGULY)

ADDL. V.P. & CO. SECY.”

7. The appellant objected to the aforesaid retirement and lodged a protest with the Respondent Company through a letter dated 23.08.2003 (**Ex. P-20**) and thereafter sent a legal notice dated 26.11.2003 (**Ex. P-21**) demanding withdrawal of the letter dated 19.08.2003. Thereafter, in the absence of any reply, the appellant instituted **Suit no. 106/2004**, titled as ‘**Sh. T.S. Mokha Vs. Ansal Properties & Industrial Ltd. and Another**’ before the learned Trial Court.
8. The appellant averred in his plaint that his termination from the services w.e.f. 19.08.2003 was illegal as it was in violation of the contract and such termination was driven by ulterior motives. He claimed that due to the illegal termination, he has suffered a loss of pay amounting to Rs. 3,37,700/- along with loss of reputation and mental peace. The appellant sought from the Trial Court a declaration that the letter dated 19.08.2003 (Ex. P-19) is *void ab initio* and a direction that the appellant be reinstated in service with back wages.

9. The Respondent Company in its written statement submitted that the appellant attained the age of superannuation in February 1997 and his term during the contractual engagement beyond the age of 58 years was subject to the discretion of the company. It was also stated that the appellant was retired from the service and not terminated. The Respondent Company denied issuance of any such letter whereby the retirement age of appellant was extended to 70 years. It was stated that the appellant was paid one month's salary in lieu of notice period. Therefore, the Respondent Company has prayed for dismissal of the suit with special costs. The appellant replied to the written submission through the rejoinder wherein he categorically denied the allegations that the documents in his possession are fabricated and reiterated that his services were prematurely and illegally terminated by the Respondent Company.
10. Based on the pleadings of the parties, the learned Trial Court framed the following issues:
- “1. Whether the plaintiff was illegally retired as prematurely w.e.f. 20.08.2003? OPP*
 - 2. Whether the suit has been properly valued and sufficiently stamped for the purpose of Court fee and jurisdiction? OPP*
 - 3. Whether the plaint has not been filed as per law, if so, its effect? OPD*
 - 4. Whether the suit is bad for misjoinder of parties? OPD*
 - 5. Relief”*
11. In support of his case, the appellant examined himself as **PW-1** while relying upon Ex. PW1/D1 to PW1/D51.

12. On the other hand, the Respondent company examined the following individuals in support of its case:

- i. Sh. S.S. Gupta as **DW-1**: He tendered his affidavit as DW1/A and relied upon documents DW1/P-1, DW1/P-3, DW1/P-4, DW1/P-5
- ii. Sh. Amitav Ganguly as **DW-2**: He tendered his affidavit as DW2/B and had relied upon the documents DW2/P-1.
- iii. Sh. P.K. Sah as **DW-3**: He, along with his affidavit relied upon the documents DW3/1, DW3/P-1 to DW3/P-6 and DW3/PA to DW3/PD.

13. Learned Trial Court *vide* the Impugned Judgment, decided Issue no.1 in favour of the Respondent company and Issue nos. 2,3& 4 in favour of the appellant. The relevant portion of the Impugned Judgement qua Issue no.1 has been extracted herein below:

“34. These types of self serving averments cannot be held as discharge of onus to prove mitigation of damages. The statement made by the plaintiff is bereft of any details as to which companies or firms he has applied to and on which dates and for what position, and for what salary and also the details as to why he could not obtain alternative employment. Even this statement of the plaintiff showed that he had not made any efforts to get re-employed. I am, therefore, of the opinion that the plaintiff, even assuming he was wrongly terminated from the services failed to prove that he had taken sufficient steps for mitigation of damages. The judgment as relied by the plaintiff titled as K. L. Sehgal V/s Escorts Heart Institute and research center Ltd. & Others, 2012 (131) DRJ 122 is not applicable on facts of the present suit because in the present suit plaintiff has already attained the age of superannuation and he was serving with the defendant company only by the pleasure of defendant company. It is not

the case of plaintiff that contract was extended by oral agreement but not for definite period. So in view of the discussion above I am of the view plaintiff is neither entitled for reinstatement nor for any future salary. The issue is deciding in favour of plaintiff against the defendant.”

14.The appellant, aggrieved by the aforementioned Impugned Judgment, has filed the present appeal, praying for setting aside the same and awarding the cost of the proceedings in his favor.

SUBMISSIONS MADE ON BEHALF OF THE APPELLANT/ORIGINAL PLAINTIFF

15.Mr. D.D. Singh, learned counsel representing the appellant has submitted that the Respondent Company illegally terminated the services of the appellant in the garb of retirement. The Respondent Company acted in violation of its letter dated 07.02.1997 (**Ex. P-18**) vide which the retirement age of the appellant was extended till the appellant attaining the age of 70 years in accordance with clause 14 of the Service Rules. It is contended that the principle of estoppel within the meaning of Section 115 of the Indian Evidence Act, 1872 has come into play since the appellant was made to believe that he would be allowed to serve till the age of 70 years. Due to this premature and illegal termination, the appellant has not only suffered financial loss but also suffered loss of reputation and dignity.

16.Learned counsel for the appellant has vehemently opposed the Respondent Company's claim that the appellant's extended contract was subject to the pleasure of the management. It is submitted that the appellant's continuation at service was not

subject to the sweet will of the management but was based on the terms of the contract. The continuation of service post-superannuation i.e., after attaining 58 years was for a fixed duration in light of the Extension letter produced as Ex. P-18. The Respondent Company wrongly relied upon Clause 15 of the Service Rules, which deals with the termination of service, as the said clause was only applicable during the appellant's first tenure with the Respondent Company. However, following his superannuation, the appellant's contract of employment was for a fixed duration until he attained the age of 70. Despite this, the Respondent Company terminated the appellant's service in blatant violation of the extension letter.

17. It is submitted by the appellant's counsel that the appellant not only continued working with the Respondent Company after attaining the age of superannuation (i.e. 58 years), but was also promoted to the post of Vice President (P&A) *vide* letter dated 23.06.1999. Continuation of appellant's service and promoting him post his superannuation was not possible without an official sanction and approval by the Respondent Company. The Respondent Company has failed miserably in providing an explanation as to how the appellant was permitted to continue in the service without an extension letter.

18. Furthermore, the learned counsel has questioned the validity of Ex. P-19 as Sh. Amitav Ganguly/DW2, who signed the said letter, has categorically admitted that he was not the competent authority to dismiss or remove the appellant from the service.

Accordingly, Ex. P-19 holds no force and was issued without authority. Therefore, it is clear that termination of the appellant was *void ab initio* and has no effect due to which the appellant continues to be in service.

19. Learned counsel has placed reliance upon the affidavit filed by the appellant wherein he deposed that the appellant applied at several places for seeking employment, but failed to receive any response for the same. It is submitted that the defendants did not previously object to Ex. P-24 which contains newspaper advertisement for jobs to which the appellant applied and hence they cannot be now permitted to raise objection regarding the same. It is false that the appellant did not attempt to mitigate the damages by applying for new job opportunities.
20. It is submitted that the written statement filed by the Respondent Company cannot be considered since neither Sh. F.N. Rai, the authorised signatory of the Respondent, nor Respondent no.2, i.e. Sh. Pranav Ansal has entered the witness box to substantiate their case. Their non-appearance warrants adverse inference against the Respondent Company.
21. Learned counsel has alleged that Sh. F.N. Rai was not an authorized representative of the Respondent Company to sign the written statement. It is an admitted fact that no resolution of the Board of Directors was passed which vested Sh. F.N. Rai with the authority to file written statement for and on behalf of the Respondent Company.

22. Learned counsel thereafter placed reliance on *K.L. Sehgal v. Escorts Heart Instituted & Research Center Ltd.*, reported as *2012 SCC OnLine Del 3323* and *S.S. Shetty v. Bharat Nidhi Ltd.*, reported as *1958 SCR 442* for the claim of damages incurred due to premature termination of the appellant's service. Learned counsel has further relied upon *Vidhyadhar v. Manikrao*, reported as *(1999) 3 SCC 573* to state that since the written statement has not been proved in accordance with law, an adverse inference ought to be drawn against the Respondent Company.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT COMPANY

23. Mr. Nishant Datta, learned counsel appearing for the Respondent Company has fervently opposed the present appeal filed by the appellant. Learned counsel has argued that the suit was not maintainable in view of Section 14(1)(c) of the Specific Relief Act, 1963.

24. It is submitted by the learned counsel that the appellant has no right, whatsoever, to claim continuation in service after attaining age of superannuation i.e., 58 years. His service in company beyond the superannuation was based upon the pleasure of the company and the company had all rights to discontinue the appellant's services at any time, after giving notice or salary in lieu of such notice.

25. Furthermore, it is contended by the learned counsel that the appellant has failed to prove the alleged extension letter dated

07.02.1997 (**Ex. P-18**). There exists no evidence on record to show that the aforesaid letter was issued under the authority of the Respondent Company in favour of the appellant. It is submitted that the appellant has himself admitted that the documents of such nature relating to the extensions are signed at least by the MD/Director level individual and not an employee at the level of Vice President. Learned counsel relied upon the affidavit of Sh. S.S. Gupta (DW1) who has been alleged to have signed the Ex.P-18. DW1 has overtly denied that he ever signed any document in favour of the appellant regarding the tenure of his service, since he was never conferred with any such authority to issue such a letter. Learned counsel further laid emphasis on the cross-examination of Sh. S.S. Gupta, where he maintains his position that the signature that appears on the Exhibit P-18 is not his signature. It is further brought to the attention of the Court that DW1 was working at a lower position than that of the appellant on the alleged date of extension, hence it is not possible for him to extend the tenure of appellant in any case.

26. Learned counsel further points out that Respondent no.2 holds a Key Managerial Position, which makes him eligible and gives him authority for signing written statement as per the provisions of the Companies Act, 2013. It is submitted that Sh. F.N. Rai, Assistant Officer (Legal) was duly authorised by the Board of the Respondent company vide Resolution dated 11.09.2003 to sign the documents relating to the present case on behalf of the Respondent Company.

27. While drawing an analogy between a public employment and private employment, learned counsel submits that even if it is assumed that the Respondent Company has extended the outer limit of the employment of the appellant from that of 58 to 70 years of age, it does not bind the company in any way to continue the service of appellant till the very end i.e. 70 years. The Respondent Company, being a private employer, can discontinue the service of its employee anytime based upon its requirement and other factors.
28. Another argument advanced by the learned counsel is with respect to the mitigation of damages caused to appellant due to loss of employment. Learned counsel raised objections regarding the steps taken by the appellant to mitigate damages. Although, the appellant has produced on record certain newspaper clippings of job advertisements, he has not provided any evidence related to applying for those jobs or participating in the recruitment process. As a result, without such follow up documents, the appellant cannot be said to have attempted to mitigate the damages caused to him due to his unemployment. In this scenario, the appellant is not entitled to claim damages from the Respondent Company due to his retirement.
29. Learned counsel placed special emphasis on Rules 14 and 15 of the Service Rules which deal with retirement and termination of service and resignation respectively. The clause specifically states that the service of an employee can be terminated for any reason by serving a month's notice in writing or salary in lieu

thereof. The appellant has admitted in his cross-examination that he has received one month's salary in lieu of notice. Therefore, even though appellant was not eligible to receive such notice pay at the time of his retirement, the Respondent company paid the requisite dues and notice pay. The Respondent Company cannot be said to have illegally terminated the service of the appellant, when in fact, it followed the Rules while retiring the appellant from the service.

30. Learned counsel for the Respondent Company submitted that the appellant, being a private employee, has no inherent right to continue in service till the age of 70 years. To support this argument, learned counsel relied upon the judgment in *L.M. Khosla v. Thai Airways International Public Co. Ltd.*, reported as *2012 SCC OnLine Del 4019*.

31. Learned counsel further relied upon paragraph 10 of the judgment delivered by the Hon'ble Apex Court in *Sughar Singh v. Hari Singh*, reported as *2021 SCC OnLine SC 975* to state that amendment to the Specific Relief Act, 1963 is prospective, and not retrospective in nature.

LEGAL ANALYSIS

32. This Court heard the arguments advanced by learned counsels for the parties and perused the documents on record and judgments relied upon by the parties.

33. The main contention in the present appeal relates to the extension letter dated 07.02.1997 (Ex.P-18) allegedly issued by the Respondent Company. It has been submitted by the appellant that

the Respondent Company extended his period of engagement until he attained the age of 70 years. Additionally, the said document has amended clause 10 of the appointment letter dated 30.05.1986, which reads as follows:

“10. Retirement : As per rules you may be retained in service upto the age of 58 years at the option of the Company.”

34. The veracity of the aforesaid document has been vehemently challenged by the Respondent Company. It has been denied by the Respondent Company that any such extension letter was issued to confirm the age of retirement of the appellant as 70 years. The Respondent Company has adopted the position that Ex. P-18, which the appellant has relied on as evidence, is a fabricated document. The Respondent Company has stated that the appellant was in full control of the daily affairs of the Respondent Company, particularly the Personnel and Administration Department and therefore had the opportunity to manipulate records and documents to suit his interests. The Respondent Company has submitted that the appellant has no inherent right to claim continuation in service since the Respondent Company has lawfully retired him from the service after observing relevant Service Rules and has fully compensated him at the time of his retirement. Moreover, it is submitted by the Respondent Company that the appellant cannot claim relief of specific performance of any alleged contract since there was no such contract between the Respondent Company and the appellant.

35. While perusing Ex.P-18, this Court has noted that the said document has been signed by an individual named Sh. S.S. Gupta, Additional General Manager-cum-Company Secretary. The Respondent Company examined the said individual as DW1. The DW1, being alleged author of the document, has deposed in his affidavit that he never signed any such letter in favour of the appellant. Relevant extract of the affidavit filed by Sh. S.S. Gupta DW1 is reproduced below:

“2. That I have seen the photocopy of letter dated 07.02.1997. The said letter does not bear my signatures. I had never signed any such letter in favour of the Plaintiff.

3. That I was never conferred any power or authority by the management of the company to issue any letter regarding the employment or tenure of service of any employee in the company.

4. That the Management of the company is only competent to extent/ the service of any employee. I state that neither the Chairman nor any Director of the Defendant Company had ever extended the retirement age of the Plaintiff to 70 years and as such there was no occasion for me to Issue the letter dated 07.02.1997.

5. That I state that the said letter Is fabricated and forged one.”

He was further cross-examined by the learned counsel for the appellant, wherein he reiterated his position that the Ex. P-18 dated 07.02.1997 was not signed by him. He also deposed that he was given a yearly extension after attaining the age of 58 years, but he does not possess any document for the extension, as the verbal extension was given to him. It is further stated by DW1 that in Respondent Company, the services were also extended orally and issuance of any letter

to this effect was not required. Furthermore, during his cross-examination, DW1 has stated that the appellant joined the Respondent Company at the post of Dy. General Manager (Adm. & Pers.), which was superior to the post of DW1.

36. Apart from Sh. S.S. Gupta, the Respondent Company also produced Sh. Amitav Ganguly, who issued the retirement letter on behalf of the Respondent Company, as DW2. Relevant extract of his affidavit has been reproduced herein below:

“3. That the management of the company is only competent to extend the service of any employee. I state that neither the Chairman nor any Director of the Defendant Company had ever extended the retirement age of the Plaintiff upto 70 years.

4. That I have signed the letter dated 19th August, 2003, on the instructions of the management thereby communicating the decision of the management to retire Mr. T.S. Mokha from the service of the Company w.e.f. 19th August, 2003.”

37. On conjoint reading of the testimonies of DW1 and DW2, it is cogent that the issuance of the disputed Ex. P-18 on behalf of the Respondent Company has been ardently denied by them. In accordance with the principles of law, the burden of proof was upon the appellant to prove the authenticity of Ex. P-18. The employee's services can be extended orally/verbally, without issuance of a written document. The appellant was unable to prove that Ex. P-18 was issued on behalf of the Respondent Company since he failed to bring on record any witness who was acquainted with the contents of the document or in whose presence the alleged document was signed. Further, the appellant

failed to take any steps to lead expert evidence to prove that the signature as appearing on Ex. P-18 was that of DW-1. In the absence of any such written document regarding extension, the appellant's claim with respect to the extension vide Ex. P-18 remains unsubstantiated. It cannot be said, that the Respondent Company fixed the term of contractual engagement of appellant until he reaches the age of 70 years. Therefore, the learned Trial Court rightly decided issue no.1 in favour of the Respondent Company and against the appellant.

38. Another limb of the argument advanced by the appellant is with respect to the premature termination of his service by the Respondent Company. The service of the appellant was discontinued vide Ex.P-19 dated 19.08.2003 issued on behalf of the Respondent Company. It is the submission of the Appellant that his services were terminated under the cloak of 'retirement' which was in violation of the terms contained in Ex. P-18 dated 07.02.1997 through which his service was extended till he attained 70 years of age. The appellant raised his objection to the aforesaid Ex. P-19 vide his letter dated 23.08.2003 i.e., Ex. P-20. Ex. P-20 dated 23.08.2003 has been reproduced herein below:

“STRONGEST PROTEST

I wish to lodge my protest to you in its strongest terms for the following:-

1) Your illegal, malafide, unilateral, arbitrary, wrongful, unjust, unreasonable, forcible termination of my services in the garb of retirement, in utter violation of the terms of my appointment and against the rule of natural justice and then not letting me record my protest for the same through your coercive tactics.

2) Your continuously ignoring my vehement protest at the time of your handing over illegal letter regarding my termination and not even listening to my repeated protest regarding your non payment of my full salary and other dues as per my entitlement under the terms of my appointment.

*3) Your forcibly taking over charge from me under duress
I hereby reiterate the above and place on record my strongest protest to you and the chairman at your cost and consequences, consequent to your refusal to allow me to do so for your illegal, wrongful, malicious and unilateral action of terminating my services prematurely in the garb of retirement and in gross violation of the terms of my appointment for which you may take its notice accordingly.*

*Yours sincerely,
(T.S. MOKHA)”*

39. It is also submitted by the appellant that despite serving a legal notice dated 26.11.2003 upon the Respondent Company, the former failed to reply to the same. On the other hand, it is the case of the Respondent Company that the appellant was not terminated but was rather retired from the service. It is the contention of the Respondent Company that the appellant cannot claim continuation in service after attaining the age of superannuation, as his extension in service after his attaining age of 58 years was solely on basis of the discretion and pleasure of the management.

40. It is imperative upon this Court to investigate whether the alleged termination of the appellant was against the Service Rules and if the Respondent Company has unfairly removed the appellant from the service. Since the extension of the retirement age to 70 years vide Ex. P-18 has remained unproved, the Respondent

Company cannot be held contractually liable to keep the appellant until he attains the age of 70 years.

41. Furthermore, Rules 14 and 15 of the Service Rules requires close perusal as they deal with retirement and termination of service respectively of the Respondent Company's employees. Aforesaid clauses have been extracted below:

"14. RETIREMENT

(a) An employee may, at the option of the Employer be retained in service, upto the age of 58 years, However, it is clearly understood and it shall always be deemed to be a condition of employment that the Employer may terminate the services' of an employee without assigning any reason for such termination provided that a notice for a period of one month or salary in lieu of such notice has been given to him. No one shall remain in service on attaining the age of 58 unless his service has been extended by a specific order of the Managing Director or the Director concerned for a defined period.

b) All leave standing to the credit of an employee due to retirement may either be allowed to him as leave preparatory to retirement or may be encashed entirely at the discretion of the employer."

"15. TERMINATION OF SERVICES AND RESIGNATION

(a) The services of a permanent employee are liable to be terminated on a month's notice in writing or salary in lieu thereof for any reason including the following ;

(i) Continued illness for a long time or frequent intermittent illness.

(ii) Physical or mental disability or infirmity, defective eye-sight or hearing etc.

(iii) Reasonable apprehension of jeopardising the safety or interest of the establishment.

(iv) reasonable doubt of commission of any act of serious misconduct

(v) bad reputation or receipt of report against him from police or any Government Department.."

42. Clause 14 of the Service Rules provides that service beyond the age of 58 years can be extended by a specific order of the Managing Director or the Director concerned for a defined period. It is also specified in the Service Rules that the service of an employee may be terminated without assigning any reason provided notice of one month or salary in lieu of such notice has been furnished to him. A perusal of the records show that the Respondent company at the time of discontinuation of his service vide Ex. P-19 had paid the appellant a salary of one month along with other dues. Further, Sh. P.K. Saha, DW3, deposed in his affidavit that he dealt with the payment made to the appellant. DW3 has stated that the Respondent Company paid a sum of Rs. 6,69,991/- to the appellant in full and final settlement of his claim, and hence no amount is due to the appellant. He has further deposed during his cross examination that Respondent Company's discretion was exercised for extension of appellant's service after he completed 58 years of age. Above all, the appellant has himself deposed that his wife received the cheque at the time of termination. Relevant portion of the appellant's cross examination has been reproduced herein below:

"Letter dt. 19/8/03 signed by my wife bears the signatures of my wife though the same was brought duly typed by somebody from the office of the defendant in my absence and the same is Ex. PW1/D51. At the time of taking the letter dt. 19/8/03 Ex. PW1/D53 the defendant employee had handed over the cheque to my wife. My wife is a medical doctor. My wife can read, write and understand English. I do not know whether after writing a letter Ex. PW1/D51 my wife had contested to the defendant or not..."

43. Moreover, it cannot be overlooked that the Respondent Company is a private employer. Even if, it is assumed that an official extension letter existed, which specified the term of employment or superannuation age as 70 years, it cannot be said that the Respondent Company would be bound to continue with the appellant's service till the specified time period. It is a settled position of law that public policy principles do not apply to private employment. For facilitating smooth functioning of the private enterprises and adjustment as per the economic trends, such enterprises are given relatively free hand to deal with appointment and termination of employees as compared to public enterprises. The standard of social safeguard as applied to the government employees, cannot be applied to a private employee as the courts have minimal role in regulating their employment terms and conditions except in certain cases.

44. It is beneficial to refer to the judgment delivered by co-ordinate bench of this Court in ***L.M. Khosla*** (Supra) wherein the Court dealt with the distinction between private and public employment for determining contractual liability. Relevant portion of the aforesaid judgment has been produced herein below:

“24. In view of the aforesaid judgments, the following conclusions in law emerge:—

(i) A contract of private employment is not similar to the public employment and in such private employment there is no scope of applicability of the principles of administrative law/public law.

(ii) A contract of employment which provides termination of services by one month's notice, then, at best the employee will only be entitled to one month's pay in terms of the employment contract. An employee is not entitled to any relief of continuation in services or pay with consequential benefits for alleged remaining period of services till the date of his superannuation.

(iii) As per the provision of Section 14(1)(c) of the Specific Relief Act, 1963, a contract which is determinable in nature cannot be specifically enforced. Since the service contract in the present case is determinable by one month's notice there does not arise the question of giving of any reliefs which tantamount to enforcement of a determinable contract. As per Section 14(1)(b), a contract of personal service cannot be enforced when the employer is not the Government or "State" as per Article 12 of the Constitution of India.

25. Plaintiff has in fact received one month's pay and therefore his claim will stand satisfied in law and he is not entitled to any reliefs as prayed for in prayer clauses in the suit."

45. Therefore, this Court is convinced that the Respondent Company has duly compensated the appellant at the time of retiring him from the service. The plaintiff/appellant, being a private employee, has no vested or inherent right to continue in services till the age of 70 years, as he has received the necessary compensation in terms of the rules of service i.e. one month's pay.

46. It is an established law that an employee who alleges illegal termination of service, must take reasonable steps to mitigate the loss arising out of such termination or unemployment. The principle of mitigation of damages is set out in Section 73 of the

Indian Contract Act, 1872 with respect to claims of damages for wrongful termination by employees.

47. The appellant has relied upon the judgment delivered by this Court in *K.L. Sehgal* (Supra) to claim damages incurred to him because of Respondent Company's unilateral and illegal action of termination. It is pertinent to note that the aforesaid judgment awarded damages since the contract in question was a fixed period contract which was terminated before expiry of the same. However, in the present case, no such fixed period contract ever existed between the parties. Therefore, the ruling given in *K.L. Sehgal* case is not applicable to the dispute in hand and lends no assistance to the case of the appellant.

48. In order to prove that he attempted at securing alternative employment after his service was discontinued at Respondent Company, the appellant has produced certain newspaper clippings containing advertising job opportunities/vacancies. It is submitted by the appellant that he applied to all those places mentioned in the advertisement, however he was unable to secure a job due to various reasons. This Court is of an opinion that mere production of newspaper advertisement is not indicative of the fact that the appellant actually tried his best to find an alternative employment. There is no evidence on record to suggest that the appellant applied for the advertised vacancies or that he was contacted by any of the companies with respect to approval or rejection of his application. It cannot be presumed that appellant worked towards mitigation of damages alleged to

have caused due to his illegal termination. Co-ordinate bench of this Court in *Satya Narain Garg v. DCM Ltd.*, reported as **2011 SCC OnLine Del 5205** has observed the following with respect to mitigation of damages:

“9. Surely, these types of self-serving averments cannot be held as discharge of onus of proof of mitigation of damages. The statement made by the deceased plaintiff is bereft of any details as to which companies or firms or persons he applied to, and on which dates, and for what position, and for what salary and also the details as to why he could not obtain the alternative employment. I am, therefore, of the opinion that the deceased plaintiff, even assuming he was wrongly terminated from services, failed to prove that he had taken sufficient steps for mitigation of damages.”

49. In accordance with the aforesaid discussion, this Court therefore holds that the appellant is not entitled to any compensation or salary as there was no illegality in the termination of his services by the Respondent Company. The Respondent Company was well within its rights to retire the appellant from service as an employer since there was no fixed period contract between them.

50. Accordingly, the present appeal is liable to be dismissed. The judgement and decree dated 21.02.2015 passed by the Additional District Judge-06 (West), Tis Hazari Courts, Delhi in Suit no. 106 of 2004 is hereby upheld.

51. Pending applications are disposed of. No orders as to the cost.

GAURANG KANTH, J.

MAY 12, 2023

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RFA 433/2015

Page 24 of 24