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

% *Date of decision: 29th January, 2024*

+ **ARB.P. 1345/2023**

DR. PRITHVIRAJ SWAMY Petitioner

Through: Mr. Kushagra Bansal, Advocate.

versus

M/S FIITJEE LTD Respondent

Through: Counsel (appearance not given).

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

I.A. 25455/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The present Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "A & C Act, 1996"*) has been filed on behalf of the petitioner seeking appointment of an independent Sole Arbitrator for adjudication of the disputes having arisen between the parties.

4. It is submitted that the petitioner is an experienced Teacher imparting education to those students who are preparing for competitive entrance examinations for engineering after completing their senior secondary school.

5. Due to higher credentials of the petitioner, the respondent *vide*



Re-offer of Appointment Letter dated 15.06.2012 employed the petitioner on the Post of Associate Professor, in Chemistry Department for imparting education to the students.

6. The petitioner worked diligently and performed his duties with utmost satisfaction. Due to the hard work of the petitioner, the respondent *vide* Appraisal Letter dated 08.07.2017 increased the salary of the petitioner to Rs. 25,11,237/- per annum. Further, the salary of the petitioner was increased by the respondent *vide* Appraisal Letter dated 15.09.2017 to Rs. 30,61,654/- per annum and he was made the Head of the Department of Chemistry at Pune Balewadi Centre.

7. Having performed the duties diligently, the respondent, to the utter dismay of the petitioner, breached the terms and conditions of the Service Rule Manual amongst others and started deferring the salary of its staff and employees, including the petitioner from June, 2018. The respondent failed to provide the reason for deferment of the salary, but it assured that the deferred salary would be released in the meantime. The petitioner continued to work with the respondent.

8. Being impressed by the performance of the petitioner, the respondent further *vide* Letter dated 31.10.2018 was pleased to promote the client as 'Managing Partner'.

9. It is submitted that the petitioner always complied with the terms and conditions of the Service Rule Manual and gave his best for the benefit of the respondent-Institute.

10. When the petitioner approached the senior officials of the respondent for release of his salary arrears, but the same did not pay heed to the respondent. On the contrary, the respondent, in spite of releasing the arrears



of petitioner, issued a Show-cause Notice dated 08.03.2019 to the petitioner. The said Show-cause Notice was duly replied by the petitioner *vide* his E-mail dated 08.03.2019 sent to the respondent.

11. It is asserted that the aforesaid Show-cause Notice was issued in total contravention of the Service Rule Manual and Code of Conduct for the Employee, whereby the respondent failed to provide any reason for issuance of the said Show-cause Notice.

12. Due to unprofessional conduct of the respondent, the petitioner, being left with no other option, was constrained to resign from the payrolls of the respondent *vide* his E-mail dated 15.03.2019 and requested to settle the dues and release the deferred salary, however, the same of no avail.

13. Thereafter, in spite of considering the resignation of the petitioner, the respondent further initiated enquiry proceedings against the petitioner and the said proceeding was held on 16.03.2019 and Enquiry Committee allegedly held the petitioner guilty for misconduct and gross violation of terms and conditions of Service Manual and Code of Conduct and the respondent malafidely terminated the services of petitioner with the sole intention to grab money from the petitioner despite the fact that he had already given his resignation.

14. Despite repeated requests of the petitioner for release of his arrears and salary, the respondent gave assurances to release the same as it was facing financial difficulties on account of COVID-19.

15. Several e-mails were sent by the petitioner to the respondent for release of arrears and salary, but the respondent did not release the same. *Per contra*, the respondent issued a Notice dated 03.12.2021 against the petitioner demanding an amount of Rs. 3,77,326/- for breaching the terms



and conditions of the Service Rule Manual.

16. Despite repeated requests, the salary and arrears of the petitioner were not released and the petitioner, left with no option, invoked the Arbitration Clause 36(a) Service Rules for the Employees of the Company and issued a Notice dated 22.08.2023 for appointment of Sole Arbitrator for adjudication of claims by way of mutual consent. However, the respondent failed to give its consent to the appointment of Arbitrator. Therefore, the present petition has been filed on behalf of the petitioner for appointment of an independent Sole Arbitrator.

17. **Submissions heard.**

18. The respondent has been served and the affidavit of service has also been filed on behalf of the petitioner and therefore, the respondent is held to be duly served.

19. It is submitted that the respondent has not been forthcoming to settle disputes in spite of invoking the Arbitration Clause 36 (a) Service Rules for the Employees of the Company and no response has been elicited from the respondent.

20. In view of the submissions made and the petitioner has raised the arbitrable disputes and there is a valid Arbitration Clause between the parties, the present petition is allowed, Ms. Vansha Suneja, Advocate, (M) 9899030007, is hereby appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

14. The parties are at liberty to raise their respective objections before the Arbitrator.

15. The fees of the learned Arbitrator would be fixed in accordance with the Schedule-IV of A & C Act, 1996 or as consented by the parties.



16. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of A & C Act, 1996 and not being ineligible under Section 12(5) of the A & C Act, 1996.

17. Learned counsels for the parties are directed to contact the learned Arbitrator within one week of being communicated a copy of this Order to them by the Registry of this Court.

18. Accordingly, the present petition is disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 29, 2024/PT