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

Date of Decision : 15th May, 2025

\+ RSA 206/2024

DR R N SINGH .....Appellant

Through: Mr. Rajul Shrivastav, Advocate (DHCLSC) with Ms. Monisha Handa and Mr. Arnav Chaudhary, Advocates.

versus

UNION OF INDIA & ORS .....Respondents

Through: Mr. T.P. Singh, Sr. Central Govt. Counsel for R-1.
Mr. H.L. Tiku, Sr. Advocate with Mr. Hitesh Wadhwa and Mr. Rahul Regmi, Advocates for R-3 & 4.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present second appeal filed under section 100 of the Code of Civil Procedure 1908 ('CPC'), the appellant seeks setting-aside of judgment dated 09.09.2019 passed by the learned Additional District Judge, Central District, Tis Hazari Courts, Delhi in RCA No.23/2018, by which the learned first appellate court has upheld judgment and decree dated 26.10.2017 passed by the learned

SCJ-cum-RC, Central District, Tis Hazari Court, Delhi in suit bearing CS No.94698/16/02. By way of judgment and decree dated 26.10.2017 the learned trial court had dismissed the suit filed by the appellant (plaintiff) seeking declaration, mandatory injunction and recovery of Rs. 2,80,250/- (including Rs.90,250/- as interest)

2. The present second appeal was initially accompanied by an application bearing CMI No. 11/2019 filed under Order XLIV CPC seeking to pursue the appeal as an indigent person, which application was allowed after due verification *vide* order dated 06.07.2023; whereafter however, the second appeal was erroneously registered as a first appeal bearing RFA No. 707/2023; which error was corrected *vide* order dated 29.11.2024 and the matter then came to be registered as RSA No.206/2024.

3. At the outset, this court considers it necessary to record that the appellant before this court is about 72 years of age, and appears to be of infirm health. As would be seen from what follows, the appellant had filed the suit in relation to the termination of his service in 1999 by respondent No.1, which suit came to be dismissed by the learned trial court in 2017; and the first appeal filed against such dismissal was itself dismissed in 2019. Thereafter, the appellant had filed an indigent application in 2019, which was allowed in 2023; after which his appeal got registered as a regular *first* appeal, which error came to be corrected in 2024. In the circumstances and in order to allay his grievance as to the delay in deciding his case, which has been very vociferously canvassed by the appellant, this court has considered the matter more holistically.

4. The court has heard Mr. Rajul Shrivastav and Ms. Monisha Handa, learned counsel appearing for the appellant; and Mr. H.L. Tiku, learned senior counsel appearing for the main contesting parties, *viz.* respondent No. 3/Apeejay School of Marketing/Management and respondent No. 4/Apeejay Education Society at length on the aspect of framing substantial questions of law in the present proceedings.

BRIEF FACTS

5. The relevant facts that are necessary to decide the present second appeal are set-out below :

5.1. The appellant joined the services of respondent No. 3 institution on 02.06.1997 at the post of Deputy Registrar, initially on probation for a period of 01 year, which services were confirmed *vide* Office Order No. 09/98 dated 19.06.1998 with effect from 02.06.1998.

5.2. Subsequently, the Government of India recommended the implementation of revised pay-scales as per the recommendations of the 5th Pay Commission, which were adopted by the respondent No. 3 only on 20.04.1999 and were implemented by them with effect from 01.01.1999.

5.3. On 30.09.1999 the appellant's services were terminated by respondent No.3, and as per the terms of his appointment, he was given 03 months' salary *in lieu* of notice period. The relevant portion of the termination letter is extracted below :

> *"This is to inform you that your services are no longer required by the Institute. It is, therefore, decided to give 3 months salary in lieu of notice period as per terms of appointment.*

You are further informed to hand-over charge to the Registrar forthwith. You are deemed to have been relieved with effect from 30.09.1999 afternoon.

Cheque Number 860398 dated 30.09.1999 for Rs. 78,774/- being three months salary is enclosed."

5.4. Consequently, the appellant filed the present suit seeking declaration, mandatory injunction and recovery of Rs.2,80,250/- (Rs.1,90,000/- as principal amount along with Rs.90,250/- as interest accrued thereon as on 28.02.2020) setting-out the following claims in his suit :

"*a) Pass a declaratory decree, inter-alia, declaring that the termination of the plaintiff vide letter dated 30.9.1999 is bad in law.*

"b) Pass a decree of Mandatory Injunction directing the Defendants to reinstate the plaintiff with full back wages.

"c) Pass a decree for recovery of a sum of about Rs. 2,80,250.00 (Rupees Two Lacs Eighty Thousand Two Hundred and Fifty only) being the Principle amount alongwith interest accrued thereon.

"d) Pass a decree of pendent-lite interest @ 24% per annum on the principle amount of Rs. 1,90,000.00 (Rupees One Lac and Ninety Thousand only) from the date of filing of the instant suit sill the realization of the instant suit.

"In the alternative pass a decree of Mandatory Injunction against the Defendants No. 1 and 2 directing them to conduct an enquiry into the matter and in case any irregularity is found and detected therein, direct the Defendants No.1 and 2 to withdraw the accreditation granted to the Defendant No.3.

"e) * * * * *"

APPELLANT'S SUBMISSIONS

6. In the memorandum of appeal, the appellant has proposed the following substantial questions of law :

> "*1. Whether the law of natural justice is applied on employee of government service only or it applies to the employee of private sector also.*
>
> *2. Whether the court below rightly decide the case of appellant/plaintiff on the basis or evidence presented by both the parties in the cases.*
>
> *3. Whether the court below rightly decide the case and dismissed suit and first appeal, where terminating the employment of appellant/plaintiff was, without serving any so cause notice.*"

7. The primary contention raised by the appellant is that the principles of natural justice have not been followed by the respondents while terminating his services. It is argued that no show-cause notice was issued to him prior to his termination; and the termination letter issued by respondent No.3 institution contains no grounds for his termination. Moreover, it is argued that contrary to the principles of natural justice, the appellant was not afforded an opportunity of personal hearing. In support of this contention the appellant has placed reliance on the decision of the Supreme Court in ***Union of India vs. Madhusudan Prasad***.[1]

8. The appellant has strenuously contended that his termination was in the nature of a 'punishment', since he had demanded implementation of the recommendations of the 5th Pay Commission *from 01.01.1996* as mandated by law; however, those recommendations were

[1] (2004) 1 SCC 43

implemented only *with effect from 01.01.1999*. It has been further submitted that the learned trial court and the learned first appellate court have both failed to appreciate that the appellant was terminated 'without cause', ignoring the Annual Confidential Reports dated 26.05.1998 and 19.06.1998, which had assessed the appellant's work as good/very good; and his confirmation letter dated 02.06.1998; as also the fact that *vidé* letter dated 21.06.1999 an annual increment had been recommended for the appellant.

9. It has been submitted that the courts below have erroneously relied upon Clauses 21 and 22 of the Service Rules of the respondent institution, without appreciating that a copy of those rules was neither made accessible to the employees nor were the aforementioned clauses included in the appellant's appointment letter nor were they referred to in his termination letter.

10. Accordingly, it has been argued that the appellant's termination was arbitrary, illegal, and in violation of the principles of natural justice.

RESPONDENTS' SUBMISSIONS

11. Respondents Nos. 3 and 4 have contested the present appeal on the following main grounds :

11.1. It has been submitted on behalf of respondents Nos. 3 and 4 that respondent No. 3 institute is a private, unaided institution that offers technical courses, though it is approved by the All India Council for Technical Education ('AICTE'). It is argued that the appellant is neither a 'public servant' nor is he a 'workman' within the meaning of the Industrial Disputes Act, 1947; and respondent No. 3 is not a statutory body; and

therefore, the appellant does not enjoy any kind of security of tenure or service.

11.2. It is contended that the prayers in the suit were barred in view of section 14(1)(c) of the Specific Relief Act, 1963 since by way thereof the appellant (plaintiff) was in effect seeking specific performance of a 'contract of personal service', which is not tenable in law.

11.3. It has also been submitted that it is settled law, that the first appellate court is the final court to decide questions of facts; and pure findings of fact are not amenable to challenge in a second appeal before the High Court. In this context, the respondents have pointed-out that the appellant had accepted the terms of his appointment as well as his termination by way of the termination letter, and had also enchased the 03 months' salary *in lieu* of notice period that was given to him. Attention of this court has been drawn to Rule 21 of the Service, Leave & Conduct Rules of respondent No. 3 institute (which were duly proved as Ex. PW 1/11 in the course of trial), which reads as follows :

> *21. The services of a permanent employee may be terminated by either side without assigning any reasons by giving three months' notice or three months' salary in lieu thereof.*

11.4. It has been further submitted that there was no *legal mandate* for private, unaided institutions to implement the recommendations of the 5th Pay Commission *w.e.f.* 01.01.1996; that the appellant was unable to show any circular issued by

respondent No. 2/AICTE to that effect; and that it is not disputed that the respondent No.3 institution implemented those recommendation *w.e.f.* 01.01.1999 and the benefits of implementation from that date have been duly paid to the appellant till the date of termination of his services.

11.5. Moreover, it has been contended that in any case, the appellant's claim for arrears of the 5th Pay Commission scales from 02.06.1997 till 31.12.1998 was time-barred, since that claim ought to have been filed by 30.12.2001 (*i.e.*, within 03 years) but the suit came to be filed only on 26.03.2002, which was beyond the period of limitation insofar as the said claim is concerned.

11.6. It has accordingly been submitted, that no question of law, muchless any substantial question of law, has been shown to arise in the present second appeal; and the appeal deserves to be dismissed with costs.

DISCUSSION & CONCLUSIONS

12. It is settled law that section 100 CPC confers jurisdiction on the High Court to entertain a second appeal *only* when it is satisfied that the case involves a substantial question of law. In ***Suresh Lataruji Ramteke vs. Sumanbai Pandurang Petkar & Ors***,[2] the scope of interference by a High Court in a second appeal has been enunciated as follows :

[2] (2023) 17 SCC 624

"*12. The jurisprudence on Section 100 CPC is rich and varied. Time and again this Court in numerous judgments has laid down, distilled and further clarified the requirements that must necessarily be met in order for a second appeal as laid down therein, to be maintainable, and thereafter be adjudicated upon. Considering the fact that numerous cases are filed before this Court which hinge on the application of this provision, we find it necessary to reiterate the principles.*

"*13. The requirement, most fundamental under this section is the presence and framing of a "substantial question of law". In other words, the existence of such a question is sine qua non for exercise of this jurisdiction. [Panchugopal Barua v. Umesh Chandra Goswami, (1997) 4 SCC 713 (two-Judge Bench)]*

"*14. The jurisdiction under this section has been described by this Court in Gurdev Kaur v. Kaki [Gurdev Kaur v. Kaki, (2007) 1 SCC 546] (two-Judge Bench) stating that post 1976 amendment, the scope of Section 100 CPC stands drastically curtailed and narrowed down to be restrictive in nature. The High Court's jurisdiction of interfering under Section 100 CPC is only in a case where substantial questions of law are involved, also clearly formulated/set out in the memorandum of appeal. It has been observed that : (SCC p. 564, para 70)*

> *"70. ... At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble". The effect of the amendment mainly, according to the amended section, was:*
>
> > *(i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved;*

(ii) The substantial question of law to precisely state such question;

(iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal;

(iv) Another part of the section is that the appeal shall be heard only on that question."

Gurdev Kaur [Gurdev Kaur v. Kaki, (2007) 1 SCC 546] was referred to and relied upon in Randhir Kaur v. Prithvi Pal Singh [Randhir Kaur v. Prithvi Pal Singh, (2019) 17 SCC 71 : (2020) 3 SCC (Civ) 372 (two-Judge Bench)].

"*15. In Santosh Hazari v. Purushottam Tiwari [Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179] a Bench of three Judges, held as under in regard to what constitutes a substantial question of law:*

(a) Not previously settled by law of land or a binding precedent;

(b) Material bearing on the decision of case; and

(c) New point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. Therefore, it will depend on facts of each case.

Such principles stand followed in State of Kerala v. Joseph [State of Kerala v. Joseph, (2023) 17 SCC 400 (two-Judge Bench)] and Chandrabhan v. Saraswati [Chandrabhan v. Saraswati, (2022) 20 SCC 199 : 2022 SCC OnLine SC 1273 (two-Judge Bench)] .

* * * * *

"*41. The questions of law raised in the instant appeal are answered as under:*

"*41.1. A Court sitting in second appellate jurisdiction is to frame substantial question of law at the time of admission, save and except in exceptional circumstances. Post such framing of questions the Court shall proceed to hear the parties on such questions i.e. after giving them adequate time to meet and address them. It is only after such hearing subsequent to the framing that a second appeal shall come to be decided.*

"*41.2. In ordinary course, the High Court in such jurisdiction does not interfere with finding of fact, however, if it*

does find any compelling reason to do so as regard in law, it can do but only after perusing the records of the trial court, on analysis of which the conclusion arrived at by such a Court is sought to be upturned. In other words, when overturning findings of fact, the Court will be required to call for the records of the trial court or if placed on record, peruse the same and only then question the veracity of the conclusions drawn by the court below."

13. Insofar as the legality of the appellant's termination is concerned, that has been answered by two concurrent judgments by the learned trial court as well as by the learned first appellate court in the following manner :

Judgment dated 26.10.2017 passed by Ld. SCJ-cum-RC, Central District, Tis Hazari Court, Delhi

"*20. The second grievance of the plaintiff was that termination letter dated 30.09.1999 was illegal in nature. As per plaintiff, he was wrongly terminated by defendant no. 4 since he was never given personal hearing by defendant no. 4, prior to issuance of said letter. The said grievance, as such lost its correctness and legality when it was an admitted position that plaintiff had applied for the post of Deputy Registrar in the office of defendant no.3, which was accepted by defendant no. 3 vide letter Ex.PW1/1, which means that relationship of defendant no. 3 as against plaintiff was that of an employer and an employee.* ***That relationship was governed by rules, as relied by the plaintiff Ex.PW1/11 in which, clause 21 empower defendant no. 3 to terminate its employee, without assigning any reason by giving three months notice or three months salary in lieu thereof****. Further, clause 22 empower defendant no. 3 to determine the services of its employee in case, the employee is found unfit on account of his/her health, subject to the aforesaid three months notice or three months salary. So, by accepting the employment of defendant no. 3, plaintiff had acceded to the said terms and conditions. If that is so, then, termination of plaintiff was not illegal as it was not required that he had to be heard personally by defendant no. 3, prior to termination of his*

services. ***Further, it is admitted case that plaintiff had received three months of advance salary, which indicated that defendant no. 3 complied with the requirements of said terms and conditions as mentioned in 'clause 21'****. Coupled with the same, it is admitted position that plaintiff had taken medical leave from 01.09.1999 till 21.09.1999. As per defendant no. 3 to 6, concerned physician of plaintiff had diagnosed him with anxiety neurosis and depression. So far as availment of medical leaves, was concerned, plaintiff had accepted the same in his replication, but he disputed the aforesaid diagnoses. Since, he had availed the medical leaves and had joined services after availing these leaves, so, it was his duty to have put on record the necessary medical certificate regarding the illness, with which he suffered for those days. Since, he did not furnish the same, so, there is every possibility that he was suffering from the anxiety, neurosis and depression which means that defendant no. 3 had ground to terminate his services as per the mandate of provision 22 of aforesaid rules. As such, defendant no. 3 did not do any illegal act by terminating the services of plaintiff and said letter dated 30.09.1999 cannot be declared as bad in the eyes of law.*

(emphasis supplied)

Judgment dated 09.09.2019 passed by Ld. ADJ, Central District, Tis Hazari Court, Delhi

"*9. In this regard, attention of this court has been drawn towards the service rules. As per the service rules which is Ex.PW1/11 before Ld. Trial Court,* ***vide its Rule 21 and 22, the service of the employee may be terminated by either side by assigning any reason and giving 3 months salary or notice in lieu thereof****.*

"*10. At the outset, it is important to mention here that* ***any such contract like the present one, is contract of personal services as per Specific Relief Act, and no contract of personal service can be specifically enforced****. All such contracts are governed by its terms and condition. The person joining any such service in such private institution accepts all the terms and conditions mentioned therein at the time of joining to the services. Such terms and*

conditions however, should not be arbitrary. It is not the case of the appellant/plaintiff that such terms and conditions mentioned in Clause 21 and 22 of the Service Rules are arbitrary. Moreso, even if it is there it does not seems to be proper forum to challenge such condition for which alternative remedies are available with the plaintiff.

* * * * *

"*12. From the bare perusal of the above judgments,* ***it is clear that the contract of personal service cannot be specifically enforced. Above all, in the case of services offered by private institution the person joining the same cannot claim their tenure, which is a private institution as a matter of right****. Private institutions are governed by principle of 'hire and fire' similar are the circumstances in the present case. In these circumstances, therefore, I am of the considered opinion that, Ld. Trial court has rightly declined the relief of declaration sought by the appellant.*

"*I3. With regard to other reliefs,* ***respondent themselves have alleged that appellant/plaintiff has given three months salary which has not been denied and disputed by the appellant/plaintiff herein****. As per the service rules this was the only provision provided to be resorted at the time of termination of services. Appellant has insisted for grant of 5th pay commission which has not been implemented.*"

(emphasis supplied)

14. Upon a conspectus of the aforenoted position of facts and law, this court is of the view that no substantial question of law arises that would warrant the present regular second appeal being admitted for hearing.

15. In fact, going beyond the scope of consideration in a second appeal under section 100 CPC, this court has also satisfied itself that there is nothing remiss in the decision rendered by the learned trial court *vide* judgment dated 26.10.2017 and by the learned appellate court *vide* judgment dated 09.09.2019.

16. The present appeal is accordingly dismissed at the stage of admission itself.

17. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J.

MAY 15, 2025
HJ