

Ravindra Kunwar vs Icici Bank Ltd on 29 April, 2017

In the Court of Ms. Vineeta Goyal: Additional District Judge-
03 (South District) Saket Court Complex, New Delhi.

Suit No.: 7797/16

CNR No : DLST01-001049-2014

In the matter of :-

Ravindra Kunwar

S/o Sudarshan Singh Kunwar,

R/o A-2/129, 3rd Floor

Sector-16, Rohini

New Delhi-110085

.....Plaintif

VERSUS

ICICI Bank Ltd.

E-30, Saket

New Delhi-110017

Also at

ICICI Bank Towers

Bandra-Kurla Complex,

Mumbai-400051

.....Defendant

Date of institution : 18.09.2015

Reserved for Judgment : 24.04.2017

Date of decision : 29.04.2017

Appearance: Sh.Nitin Mangla and Sh. Mahender Pratap,
Counsel for the plaintiff.
Dr. M.Y. Khan, Counsel for the defendant.

JUDGMENT

1. The plaintiff has filed suit for declaration, mandatory injunction, recovery of arrears of salary of Rs.1,76,834/- and for Rs.5,00,000/- towards damages against defendant.

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2. Facts as averred in the plaint are that plaintiff is a Bachelor of Science from CCS University and has also done Post Graduate Diploma in Business Management from IMT, Ghaziabad. The defendant is a private limited bank having its Corporate office at Mumbai and one of its Branch Office at E-30, Saket, New Delhi. It is averred that the plaintiff joined defendant on October 01 st 2008 at the post of Debt Manager (Band-II) with its Branch office at Sector-8, Rohini, Delhi. He was given a unique employee ID no. 181351. At the time of joining the defendant, the job of the plaintiff was primarily concerned with Debt Service Management Group. It is further averred that in the offer letter/ employment agreement dated 27.08.2008, the following components were made part of

total remuneration offered to the plaintiff by the defendant:-

"(a) Base Salary = Rs.2,88,000/- per annum

(b) Supplementary Allowance= Rs.4,38,000/- per annum which includes HRA, Additional HR, Conveyance/ Travel Allowance, Telephone reimbursement, LTA, Medical Reimbursement, Canteen & any other allowance.

(c) Superannuation Allowances= Rs.43,200/- per annum."

2.1 It is further averred that as per offer letter/ employment agreement, the following terms were agreed upon between the parties with regard to period of notice to be served by either parties qua resignation / termination of services of plaintiff:-

"Notice period: In case you decide to leave the Bank's services during probation period, you will be required to give forty five days' notice. The Bank in its sole discretion can decide to waive off/ reduce the notice period depending upon the exigencies. In such case, you would be required to pay to the Bank the gross salary for the notice period so CS No: 7797/16 Page no. 2 of 28 reduced/ waived off.

In case you decide to leave the Bank's services after confirmation, you will be required to give ninety days' notice. The Bank in its sole discretion can decide to waive off/ reduce the notice period depending upon the exigencies. In such case, you would be required to pay to the Bank the gross salary for the period so reduced/ waived off. After confirmation, your services would be liable to be terminated by the Bank, by giving ninety days' notice or on payment of ninety days' gross salary in lieu of the notice period."

2.2 It is further averred that the plaintiff was made permanent by the defendant from April 2009 and was promoted to the post of Area Debt Manager. He was made permanent and promoted pursuant to the completion of probation period and also on the basis of his satisfactory performance. It is also averred that he has played a significant role in the growth of defendant. There has not been even a single incident when he was reprimanded for his work by any of his staff members/ colleagues/ seniors at any branch of defendant at any point of time. Since the defendant was completely satisfied with the performance of the plaintiff, it continued to extend its Annual performance based incentive program i.e. ICICI Bank performance bonus plan to the plaintiff every year during his entire period of service with the defendant which is more than five years.

2.3 It is further averred that since the employees of the defendant are governed by a rotational policy, the defendant transferred the plaintiff from his Rohini Branch to Saket Branch office.

2.4 It is further averred that on June 12, 2014 the plaintiff was

informed by his father about the receipt of letter dated 07.06.2014 from defendant at his parental address i.e. House no. 79/20, Gatta Mill Colony (Cooperative Assurance Colony), opposite Kalpana Cinema, Saharanpur. The said letter was duly forwarded by his father to him at his above-stated address at Delhi. After receipt of aforesaid letter, the plaintiff was shocked to learn that it was his "Termination Letter". It is alleged that despite the plaintiff had been regularly attending his office at Saket Branch till June 10, 2014, the defendant never informed him about its said intentions but chose to send the notice to his parental address. This clearly shows that the defendant was shirking away in confronting the plaintiff and that is why it was trying to delay the passing of information about his termination.

2.5 It is further averred that from the said notice dated 07.06.2014 it appeared that it was marked / addressed by the defendant to its own Saket Branch office and not to the plaintiff's residential address. Also even at its own Saket Branch office, it was never served upon the plaintiff till the last day of working. Since the address mentioned in the Termination Letter is different from the one on which it was actually served, it cannot be termed as service of notice within the meaning of General Clauses Act, 1897 and Evidence Act, 1872. It is further averred that without prejudice to his rights and contentions, the plaintiff submits that defendant has failed to assign in the said letter any reason, whatsoever, for the sudden termination of his service on its organization. As per terms of offer letter/ employment letter, the services of the plaintiff can be terminated by the defendant only under some defined conditions as follows:-

CS No: 7797/16 Page no. 4 of 28 " Termination of Employment: Your services with the Bank are liable to be terminated:

Without assigning any reason and without giving any notice during probation period.

At any time during your services with Bank in the event of:

(a) Any breach of the conditions mentioned in this letter on your part

(b) Any incorrect information furnished by you like mismatch in your previous • Employment date even for a day • Pay slip • Fake qualification certificate etc.; and C) Suppression of any material information by you."

2.6 It is further averred that since the purpose of termination of services of the plaintiff, the pre-requisite of stating any specific and valid reason in the notice was not adhered to by the defendant, the plaintiff does not accept its alleged notice dated 07.06.2014 and rejects it outrightly. The plaintiff does not fall into any of the above-mentioned categories.

2.7 It is further averred that it appears from the alleged notice that a sum of Rs.1,84,100/- by way of alleged cheque has been sent by the defendant to the plaintiff alongwith the notice. Without prejudice to his rights and contentions, the plaintiff states that the said alleged cheque was never

received by him. It is further averred that since June 09, 2014, the plaintiff has illegally been stopped by the defendants from discharging his services, his computer system, NT password as well as his official e-mail ID was also disabled by the defendant. Various e-mails CS No: 7797/16 Page no. 5 of 28 were sent by the plaintiff requesting the defendant to allow him to work and also to unlock/enable the aforesaid systems but to no response. These mails would show that plaintiff had not accepted the notice even after having received the same from his father.

2.8 It is further averred that since the plaintiff was illegally stopped from attending his office, he was left with no other option but to respond to the alleged notice by sending a reply dated 08.07.2014 through his counsel thereby rejecting the acceptance of said notice and made his stand clear regarding the entire controversy. The defendant was also called upon to withdraw its notice being illegal and also requested to reinstate the plaintiff with immediate effect alongwith back wages failing which legal action would be taken against the defendant. It is alleged that despite service, the defendant has failed to give any reply to the said notice/reply. It is further averred that since no proper channel for terminating plaintiff service was adopted by the defendant neither any relieving letter nor any other document like experience certificate etc. have been furnished to him, the plaintiff was rendered jobless by the defendant as in the absence of above-stated documents, no other bank/ company will hire the plaintiff for its organization. The entire career and the future of the plaintiff has been put in jeopardy and on account of this the plaintiff has become a patient of mental depression and has developed several health problems like high BP etc. 2.9 It is further averred that defendant is liable to pay the following dues to the plaintiff:

"(a) Salary @ Rs.68,447/- from June,2014 to October,2014 =Rs.3,42,235/-

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(b) Gratuity @ Rs.13,890/- per annum from June, 2014 to October, 2014 = Rs.5,788/-

Total = Rs.3,48,023/-"

It is also stated that after issuance of letter dated 02.06.2014 a sum of Rs.53,875/- was deposited by defendant on 02.07.2014 in the bank account of plaintiff under the heading "FNF SETTLEMENT". The defendant has also deposited a sum of Rs96,162/- on July 9, 2014 towards gratuity. After deducting the aforesaid amount to the outstanding amount of Rs.3,48,023/-, the balance outstanding amount to be paid by the defendant comes to Rs.1,97,986/-. It is further submitted that since his termination was illegal and no computation was shared by him, such sum was never admitted by the plaintiff. It is further averred that plaintiff is also entitled for Rs.5,00,000/- for the mental agony and harassment caused to the plaintiff due to illegal. On the strength of aforesaid grounds, a prayer was made that termination notice dated June 07, 2014 be declared as null and void, mandatory injunction be granted thereby directing the defendant to reinstate the employment of the plaintiff alongwith back salary and all the benefits and outstanding salary and gratuity as well

as damages.

3. The defendant filed written statement inter alia raising preliminary objection that the suit of the plaintiff is not maintainable as the services of the plaintiff were terminated as per the terms of his employment. The suit of the plaintiff is barred by Section 14 (1) (a) and (c) and Section 41(e), (h) and (i) of the Specific Relief Act, 1963. It is submitted that plaintiff was appointed vide appointment letter/ employment agreement letter CS No: 7797/16 Page no. 7 of 28 dated 28.08.2008 as Manager (Band-II) and he was placed in DSMG at Delhi. He was getting all the benefits as per the said employment agreement and the services have also been terminated as per termination clause mentioned therein instead of casting any stigma on his service career. The plaintiff has been simply discharged by giving salary of ninety days in lieu of notice of ninety days which is matter of record. On merits, it is submitted that performance of the plaintiff was assessed since the very beginning but the same was not found satisfactory, this fact was communicated to him from time to time but no improvement was found in his honesty, conduct, discipline and punctuality. The defendant is maintaining the said performance assessment of the plaintiff while he was in the employment of the defendant, however, the services of the plaintiff were confirmed as per the employment agreement/ appointment letter to afford him further opportunities for such improvement. The bank was expecting such conducts as mentioned herein above but during his employment, he has shaken the confidence of the management by his own conducts. The bank was left with no alternative but to discharge the plaintiff from his services as per the terms of employment/ agreement letter. It is further submitted that discharge letter dated 07.06.2014 was tendered to him alongwith a cheque of Rs.1,84,100/- bearing no. 304864 dated 07.06.2013 which was the salary in lieu of ninety days notice but the plaintiff completely refused to receive the same. The management sent the said letter alongwith cheque at his residence which was given by the plaintiff at the time of getting employment in the bank. It is also submitted that defendant had taken the lenient view and plaintiff was discharged from his CS No: 7797/16 Page no. 8 of 28 services instead of taking any disciplinary action or serving any charge-sheet which could have cast a stigma on his service career.

3.1 It is further submitted that the plaintiff was admittedly working in Saket Branch office at the time when the discharge notice was tendered but he refused to receive the same that is why the said letter was sent at the address which was given by the plaintiff. It was proper service of notice which contained the reason and the cheque of ninety days salary in lieu of notice which is in compliance of the terms mentioned in the employment agreement/ appointment letter.

3.2 It is further submitted that plaintiff has been discharged simplicitor as per the terms of employment agreement. The clause (a) and (b) of the termination clause are independent and over and above the clause of notice period. These, both clauses, have given the powers to the defendant either to simply discharge the plaintiff by giving a notice as mentioned in the notice period, if circumstances so required, or can terminate his services without giving any notice as mentioned in

aforesaid clause. The services of the plaintiff was terminated by giving ninety days salary in lieu of ninety days notice as mentioned in the notice clause. It is further submitted that since the discharge notice was tendered to the plaintiff and he had gone through the contents of the same and also seen the cheque attached with it but he refused to receive the same, the plaintiff cannot allege that he was illegally stopped by the defendants or his computer system, NT password as well as his official e-mail ID was CS No: 7797/16 Page no. 9 of 28 stopped. It is submitted that this was stopped so that plaintiff could not misuse the same which could have cost irreparable loss and injuries and even could have harmed the reputation of the defendant.

3.3 It is further submitted that the defendant had discharged the plaintiff as per the terms of his employment agreement. It is nowhere written in the agreement that at the time of termination of employment, he should be given any alleged relieving letter or experience certificate. The last employment record of the plaintiff revealed that his services were terminated by his previous employer also. No loss has been caused to the plaintiff and the plaintiff is only pretending that he has become the patient of any alleged illness. It is further submitted that plaintiff was required vide letter dated 07.06.2014 that he can contact or can send e-mail to settle his accounts by sending e-mail to the helpdesk@icicibank for PF, EPS, Gratuity, Income Tax deduction, Form-16 or superannuation, salary slip etc., however, the plaintiff did not contact them for any such settlement/information. On the strength of aforesaid grounds, a prayer was made that suit of the plaintiff deserves dismissal.

4. The plaintiff filed replication to the written statement wherein he has reiterated the averments made in the plaint and denied the contents of the written statement.

5. From pleadings of parties following issues were framed on 29.07.2015 as follows:-

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1. Whether the services of the plaintiff are illegally terminated by the defendant bank vide letter dated June 7, 2014 against the contract of employment? OPP

2. Whether the defendant bank is liable to reinstate the services of the plaintiff with same other employment benefits? OPP

3. Whether the plaintiff is entitled for recovery of outstanding amount of Rs.1,97,986/- from the defendant bank? OPP

4. Whether the plaintiff is entitled for damages, if yes, what amount? OPP 5 Whether the services of plaintiff were terminated as per the contract of employment and the suit is barred by Section 14 (1) (a) & (c) and Section 41 (e), (h) & (i) of Specific Relief Act? OPD 6 Whether the defendant bank has already paid Rs.1,84,100/- in lieu of 90 days notice and nothing else is payable to the plaintiff? OPD 7 Whether the plaintiff is entitled to any Relief?

6. In order to prove its case, the plaintiff tendered evidence by way of affidavit as Ex. PW1/A and made statement inconsonance with the averments made in the pleadings and produced photocopy of educational qualification (Graduation mark-sheet) Ex. P.1 (OSR), Employment agreement dated 27.08.2008 Ex. P.2, Termination letter dated 07.06.2014 Ex. P.3, e-mails dated 19.06.2014, 11.06.2014, 12.06.2014, 13.06.2014, 17.06.2014 and 18.06.2014 alongwith certificate under Section 65B of Indian Evidence Act, 1872 regarding documents procured from internet Ex, P.4 (colly), reply to termination letter dated 08.07.2014 alongwith postal and courier receipt Ex. P.5 (colly) and statement of bank account of the plaintiff Mark 'A'.

6.1. This witness was subjected to cross-examination and stated that appointment letter was issued to him on 27.08.2008 and joined the services on 01.10.2008. He has also stated that he had gone through the conditions mentioned in his appointment letter CS No: 7797/16 Page no. 11 of 28 pertaining to his services and in lieu of acceptance, he signed the same and joined his duties. He admitted that his designation was Manager (Band II) and in his branch he was the only Band II Manager. Further in his cross-examination, was put a question that 'Is it correct that you were doing confidential and responsible duties of the defendant bank. He responded that he always did his work sincerely as per company policy.' He further admitted that policies were communicated to him and followed by him. He stated that it is correct that he always kept the confidential information to him only and those were communicated to him confidentially. He had not disputed in his cross-examination that he was terminated vide letter dated 07.06.2014 Ex. P.3. He denied the suggestion that his official ID was blocked on 07.06.2014. He has also disputed that the cheque which has been mentioned in letter dated 07.06.2014 has been received by him. He denied the suggestion that he had not written the letters because he had received the cheque and he had not got encashed the cheque. He further, in his cross- examination, stated that he used to get Rs.62-64000/- per month in hand as salary which used to be credited in his bank account. He also deposed that he has not filed any attendance record to show that he joined his duties after 07.06.2014 and also admitted that he cannot communicate through official ID once it get blocked. He has further deposed that he has sent one e-mail to HR through official ID and all other e-mails filed by him were sent through his personal ID. He also reports that he has not applied any clearance and he has not made any communication to the management to his termination or any other clarification regarding the amount of Rs.1,84,100/-.

CS No: 7797/16 Page no. 12 of 28 6.2. In defence, the defendant Sh. Abhishek Mishra as DW1 made statement in accordance with the defence taken in the Written Statement and tendered by way of affidavit as DW1/A and during cross-examination deposed that he has authorized by the bank by way of Power Of Attorney to appear in the cases and deposed in the suit. He produced Power of Attorney dated 13.08.2013 Ex.D-1 and also produced Power of Attorney of Sh. Sanjay Sharma Ex.D-2 who had signed the written statement. He further stated that apart from the appointment letter Ex.P-2, no other document / agreement executed between the parties with regard to the appointment and termination of the plaintiff. He has also stated that he has not placed any document i.e. email, letter any other correspondence on record to show there were deficiency in the work of the plaintiff. He denied the suggestion that no deficiency in the work done by the plaintiff or the performance of the plaintiff as per the satisfaction of the defendant. He further answered that the defendant tried to serve the notice to the plaintiff personally in the office but he refused to

received the same, thereafter, they have sent the notice on both the address of the plaintiff. He further deposed that the plaintiff was stopped from coming office from 07.06.2014, however, voluntarily stated that the plaintiff was on duty on 07.06.2014. He admitted that photocopy of the cheque of Rs.1,84, 100/- has not been placed on record but denied the suggestion that no such cheque ever sent to the plaintiff. He further deposed that termination of the plaintiff was done under the termination rules mentioned at page 2 of Ex.P-2. He also testified that in the termination letter Ex.P-3 the defendant has not mentioned any ground and stipulated at page 5 of Ex. P.2, however voluntarily CS No: 7797/16 Page no. 13 of 28 stated that the service of the plaintiff was terminated as simplicitor as per page 2 of the appointment letter. With regard to the experience certificate, it is deposed that at the time of termination the defendant issues only the termination letter, however if the managerial staff request for any experience certificate then his request is subject to the considered by the defendant. He admitted that some amount with regard to full and final settlement and gratuity were deposited in their bank account. He further in his cross-examination stated that he has not placed on record the calculation pertaining to the deposit of full and final settlement of gratuity. The full and final settlement was not inclusive of three months notice period salary. It was paid separately through the cheque alongwith the resignation letter. He has also stated that as per the process of defendant, the amount in due of notice period is paid by the cheque only and the plaintiff has not encashed the said cheque of three months notice. With regard to the email Ex.P-4 (colly), he was put a question that is it correct that email dated 09.06.2014 was sent by the plaintiff from the official server. This witness responded that he can not say without checking the system of the plaintiff which has been using in the defendant. He denied rest of the suggestions during the cross-examination.

7. Learned Counsel for the plaintiff argued that the service of the plaintiff were terminated illegally by the defendant which is against the contract of employment Ex.P-2. It is argued that the plaintiff joined the defendant on 01.10.2008 at the post of Debt Manager (Band II) and since the appointment, there has not been a single incident when he was re-approach or reproval by any of CS No: 7797/16 Page no. 14 of 28 the staff member/ colleagues / seniors. The plaintiff was promoted to the Area Debt Manager and he has made permanent by the defendant from April 2009. The defendant has not placed on record any document to show that there were deficiency in the work of the plaintiff and the same fact has been admitted by DW1 in his cross-examination. He further stated that no cheque for sum of Rs.1,84,100/- was received however, it is admitted that the plaintiff has received a sum of Rs.53,875/- in his bank account under the heading of full and final settlement and a further sum of Rs.96162/- 09.07.2014 towards gratuity. This amount can be deducted from the dues which the defendant is liable to pay the plaintiff as in the para 21 of the plaint. It is further contended that on account of illegal termination, the plaintiff has suffered mental agony for which the plaintiff is entitled for damages.

7.1. Per contra, it is argued by the learned counsel for the defendant that service of the plaintiff terminated as per agreed termination clause mentioned in Ex.P-2. The performance of the plaintiff since beginning was not found satisfactory, he was advised by his superiors time to time. The bank was left with no alternative, but to discharge the plaintiff from his service as per agreed termination clause mentioned in Ex.P-2. After giving a cheque of RS.18,100/- i.e. 90 days wages in lieu of notice period. It is further argued that the defendant (bank) is registered under the Companies Act 1956. It

is doing very trustworthy and confidential nature of job and retaining the money at its actual holders with full trust and honesty wherein little slackness hamper the progress of the defendant. It is further argued that CS No: 7797/16 Page no. 15 of 28 condition of the services of the plaintiff were governed by service rules of defendant. The services of the plaintiff were terminated as per termination clause in Ex. P.2 and plaintiff was discharged from his services instead of taking any disciplinary action or serving any charge-sheet which could have cast a stigma on his career.

7.2. Learned counsel for the defendant further argued that contract of service of personal nature are not enforceable and placed reliance upon judgments as follows:-

1. Pearlite Lines Pvt. Ltd v. Manorama Dirsi 2004 II AD (SC) 246 (SC),
2. Nandganj Sihori Com. Ltd. v. Badri Nath Distt. & ors 1991 (3) SCC 54 (SC)
3. Bank of Baroda Ltd. v. Jewan Lal Mehrotra 1970 (2) LLJ 45 (SC)
4. S.E. Tewari v. District Board, Agra AIR 1964 SC 1680
5. U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi AIR 1970 SC 1244.
6. Indian Airlines Corporation v. Sukhdeo Rai AIR 1971 SC 1828
7. Sirsi Municipality's case (AIR 1973 SC 855)
8. Vinod Pathak v. American Express Bank Ltd. (2015) 153 DRJ 172

8. I have heard arguments advanced by learned counsel for parties and have gone through material available on record and my issue-wise findings are as under.

Issue no(s). 1, 2 and 5 8.1. These issues are being taken up together being inter- connected. The burden to prove issue no(s). 1 and 2 was upon the plaintiff and burden to prove issue no. 5 was upon the defendant.

CS No: 7797/16 Page no. 16 of 28 8.2. It is admitted fact that the employment of the plaintiff with the defendant is a private employment as the defendant is neither a State nor an authority of the State as per Article 12 of the Constitution of India. Public policy principles or Administrative law principles do not apply to private employment. In private employment, the employer is justified in termination of employment of the employee if the employee is not up to the mark. The employment in the private sector is governed by the terms & conditions of the employment.

8.3. The plaintiff's case as already stated hereinabove, is that his services have been illegally terminated by the defendant vide letter dated 07.06.2014 against the contract of employment. In order to decide the aforesaid question, the relevant clauses of appointment agreement are pertinent

and in the present case plaintiff himself relies upon the terms and conditions of employment issued by the defendant.

8.4. Relevant clauses of agreement Ex. P.2 with regard to notice period as well as termination of employment states as under:-

" Terms & Conditions of service • Notice period: In case you decide to leave t h e B a n k ' s s e r v i c e s d u r i n g probation period, you will be required to give forty five days' notice. The Bank in its sole discretion can decide to waive off/reduce the notice period depending upon the exigencies. In such case, you would be required to pay to the Bank the gross salary for the notice period so reduced/waived off. • In case you decide to leave the Bank's services after confirmation, you will be required to give ninety days' notice. The Bank in its sole discretion can decide to waive off/reduce the notice period depending upon the exigencies. In such case, you would be required to pay to the Bank the gross salary for the notice period so reduced/waived off. • After confirmation, your services would be liable to be terminated by the Bank, by giving ninety days' notice or on payment of ninety days' CS No: 7797/16 Page no. 17 of 28 gross salary in lieu of the notice period.

Termination of Employment: Your services with the Bank are liable to be terminated:-

- Without assigning any reason and without giving any notice during probation period.
- At any time during your services with the Bank in the event of
 - a) Any breach of the condition mentioned in this letter on you part.
 - b) Any incorrect information furnished by you like mismatch in your previous • Employment data even for a day • Pay slip • Fake qualification certificates etc; and
 - c) Suppression of any material information by you."

8.5. A reading of last paragraph of the aforesaid notice period clause shows that after confirmation, termination of employment can take place as a no fault subject to giving a ninety days notice or payment of ninety days gross salary in lieu thereof. Clear interpretation of the above said clause adverts to the fact that, at the best, the plaintiff can seek salary of the notified period. It is evident from record that vide letter dated 07.06.2014 Ex. P.3, the agreement was terminated with effect from the date of service of this letter and a cheque was also sent for a sum of Rs.1,84,100/- net of tax towards salary in lieu of the notice period and the receiving of which is disputed by the plaintiff and the contents of the Ex. P.3 are reproduced hereunder as:

" June 7, 2014 Mr. Ravindra Kunwar Emp. No - 181351 Manager-II RBG-CSBB New Delhi-Saket Branch Residence Address:-

B-8/83 Sec-3 Rohini New Delhi-110085 Dear Mr. Ravindra Kunwar, CS No: 7797/16 Page no. 18 of 28 We refer to your terms of employment as detailed in you letter of appointment DSMG/FY09/N/N/219 dated August 27, 2008 and the amendments/Changes made thereto from time to time, till date. We also refer to various Rules and Regulations of the Bank applicable to you.

Please note that your services are no more required by the Bank and therefore your services are hereby terminated with effect from the date of this letter is served on you in terms of the aforesaid contract of employment.

Enclosed please find herewith bankers Cheque Number 304864 dated June 7, 2014 for Rs.1,84,100/- net of tax, towards salary, in lieu of notice period, as applicable to you.

You are requested to return the identity Card to the nearest control room in absence of which the Bank will recover the cost towards the ID card from your final salary settlement. Physical retention of Identity Card beyond the last working date will be considered unauthorized and the bank will not take any responsibility for any probable misuse. The Bank is authorized to initiate appropriate action in case of any unauthorized usage of the Identity Card.

For any queries related to settlement you can write a mail to settlement.helpdesk@icicibank.com. For any queries related to Loan, PF, EPS, Gratuity, Income Tax deduction, Form 16, superannuation, salary slip you can write a mail to payroll.helpdesk@icicibank.com.

Yours faithfully Vikas Singhvi Joint General Manager Encl: Cheque no. 304864 for Rs.1,84,100/- dated June 7, 2014"

8.6. It is relevant to mention here that the contract of employment signifies contract of service between the employer and employee whereunder the employee agrees to serve the employer subject to his control and supervision. There are two words i.e. discharge and dismissal of employee. Dismissal of employee is the biggest punishment which an employer can give to an employee. It is termination of services by way of punishment for some misconduct whereas discharge is termination of a contract by notice and payment of wages / salary CS No: 7797/16 Page no. 19 of 28 in lieu of the notice. The procedure of dismissal is that before dismissal the employee may be placed in suspension and a proper inquiry is conducted to enquire about misconduct of the employee and the employer was required not to act capriciously and arbitrarily. On the other hand, discharge is separation of the employee from the payroll when the employee does not justify the employment of the employer.

8.7. Reverting back to the facts of the case, the employment in this case is a contractual employment and is not a statutory employment. It is evident from the record that the services of the plaintiff was terminated as per notice period as the parties are admittedly governed by the contractual relations. The maximum effect, even if assuming that the defendant is guilty of any breach of contract in wrongly terminating the services, the plaintiff at the best would be entitled for the salary. His services have been terminated simplicitor. It cannot be said that services of the plaintiff were terminated illegally.

8.8. It is no more *res integra* that the contract of personal violition are not enforceable as per Section 14 (I) (a) (c) of Specific Relief Act, 1963.

8.9. Learned counsel for the defendant has placed reliance upon judgment M/s Pearlite Lines Pvt. Ltd v. Manorama Dirsi 2004 II AD (SC) 246 (SC), wherein Hon'ble Supreme Court has held:

"The question arises as to whether in the background of facts already stated can such reliefs be granted to the plaintiff. Unless there is a term of the contrary in the contract of service, a transfer order is a normal incidence of service. Further, it is to be considered that if the plaintiff does not comply with the transfer order it may ultimately lead to termination of service.

CS No: 7797/16 Page no. 20 of 28 Therefore, a declaration that the transfer order is illegal and void in fact amounts to imposing the plaintiff on the defendant inspite of the fact that the plaintiff allegedly does not obey order of her superiors in the Management of the Defendant Company. Such a relief cannot be granted. Next relief sought in the plaint is for a declaration that he continues to be in service of the Defendant Company. Such a declaration again amounts to enforcing a contract of personal service which is barred under the law. The third relief sought by the plaintiff is a permanent injunction to restrain the defendant from holding an enquiry against her. If the Management feels that the plaintiff is not complying with its directions it has a right to decide to hold an enquiry against her. The Management cannot be restrained from exercising its discretion in this behalf. Ultimately, this relief if granted would indirectly mean that the court is assisting the plaintiff in continuing with the defendant company, which is nothing but enforcing a contract of personal service. Thus, none of the reliefs sought in the plaint can be granted to the plaintiff under the law."

8.10. Further, in Nandganj Sihori Com. Ltd. v. Badri Nath Distt. & ors 1991 (3) SCC 54 (SC) it has been held as follows:

" On the facts of this case, the High Court was clearly wrong in issuing a mandatory injunction to appoint the plaintiff was entitled to seek relief, the only relief which available in law was damages and not specific performance. Breach of contract must ordinarily sound in damages, and particularly so in the case of personal contracts. Assuming that a contractual relationship arose consequent upon

the letters addresses by defendant no. 3 to defendant no. 1, the plaintiff was a total stranger to any such relationship, for, on the facts of this case, on relationship of a fiduciary character existed between the plaintiff and defendant no. 3 or other defendants. Neither on principles of law or equity nor under any statute did the plaintiff acquire an enforceable right by reason of the letters exchanged between defendant no. 1 and 3. The plaintiff had no privity of any kind of their relationship. No collateral contract to which the plaintiff was party did arise on the facts of this case. At no time was defendant 3 acting as an agent of the plaintiff. There is no express or implied contract which is enforceable by the plaintiff."

8.11. Further reliance is placed upon the observation in case of Bank of Baroda Ltd. v. Jewan Lal Mehrotra 1970 (2) LLJ 45 (SC) it has been held as follows:

" .. The main point that has been urged on behalf of the appellant CS No: 7797/16 Page no. 21 of 28 is that the present case was one of termination of service after giving three months' notice and the ordinary law of master and servant applied. Although in case of illegal termination or dismissal the respondent could have claimed damages but he could not ask for or be granted a declaration that he should be treated as if he was still in service. The law as settled by this court is that no declaration to enforce a contract of personal service will be normally granted. The well recognized exceptions to this rule are (1) where a public servant has been dismissed from service in contravention of Art. 311; (2) where reinstatement is sought of a dismissed worker under the industrial law by labour or industrial tribunal (3) where a statutory body was acted in breach of a mandatory obligation imposed by statute: Vide Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi (1970-20 F.L.R. 17). The case of the respondent did not come under any of the above exceptions. Therefore, in granting a declaration of the nature sought by the respondent the courts acted contrary to law and that part of the decree could not be upheld. On behalf of the appellant the reversal of the decree for Rs.1650/- has not been pressed."

8.12 In case of S.E. Tewari v. District Board, Agra (1964) 3 SCR 55 At p. 59 (AIR 1964 SC 1680 at P. 1682) the Hon'ble Supreme Court observed as follows:

" Under the common law the court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But this rule is subject to certain well- recognized exceptions. It is open to the courts in an appropriate case to declare that a public servant who is dismissed from service. In contravention of Article 311 continues to remain in service, even though by so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly, under the industrial law, jurisdiction of the labour and industrial tribunals to compel the employer to employ a worker, whom he does not desire to employ, is recognized. The court are also invested with the power to declare invalid the act of a statutory body. If by doing the act the body was acted in breach of mandatory

obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do."

8.13. In case of Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi (1970) 2 SCR 250 at P. 265 (AIR 1970 SC 1244 at page 1253) where it was CS No: 7797/16 Page no. 22 of 28 observed as follows:

"From the two decision of this court, referred to above, the position in law is that no declaration to enforce a contract of personal service will be normally granted. But there are certain well-recognized exceptions to this rule and they are. To grant such a declaration in appropriate cases regarding (1) A public servant, who has been dismissed from service in contravention of Art. 311; (2) Reinstatement of a dismissed worker under Industrial Law by Labour Industrial Tribunals; (3) A statutory body when it has acted in breach of a mandatory obligation, imposed by statute."

8.14 In Indian Airlines Corporation v. Sukhdeo Rai AIR 1971 SC 1828, the Hon'ble Supreme Court has held:

"It is a well settled principle that when there is a purported termination of a contract of service still subsisted, would not be made in the absence of special circumstances because of the principle that courts do not ordinarily grant specific performance of service. This is so, even in case where the authority appointing an employee was acting in exercise of statutory authority. The relationship between the persons appointed and the employer would in such cases be contractual, i.e. between a master and servant and the termination of that relationship would not entitle the servant to a declaration that his employment had not been validly determined."

8.15 In Bank of Baroda v. Jewan Lal Mehrotra (1970) 2 LAB LJ 54, 55 where the Hon'ble Supreme court observed as follows:

"The law as settled by this court is that no declaration to enforce a contract of personal service will be normally granted. The well recognized exceptions to this rule are (1) where a public servant has been dismissed from service in contravention of Art. 311; (2) Where reinstatement is sought of a dismissed worker under the industrial law by labour or industrial tribunals; (3) where a statutory body has acted in breach of a mandatory obligation imposed by statute."

8.16 In the Sirsi Municipality's case (AIR 1973 SC 855) the matter was exhaustively reviewed and Hon'ble Justice Ray observed as follows:

CS No: 7797/16 Page no. 23 of 28 "The cases of dismissal of a servant fall under three broad heads, purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance. Similarly, breach of contract of employment is not capable of founding declaratory

judgments of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract of employment for personal service. Such a declaration is not permissible under the law of Specific Relief Act."

8.17. The similar issue was under consideration before Hon'ble Delhi High Court in case titled Vinod Pathak v. American Express Bank Ltd. 2015 SCC online Del 12389: (2015) 153 DRJ 172 wherein Honb'e High Court analyzed the series of earlier judgments, statutory provisions and other circumstances observed as under:

"8. In view of the aforesaid judgment, 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 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."

8.18. Reverting back to the case in hand, appropriately guided by the law laid down by Hon'ble High Court in the cases CS No: 7797/16 Page no. 24 of 28 (supra) and applying to the facts of this case, the contract herein being the contract of personal service is not enforceable under Section 14 (1) (b) of the Act, 1963. Further, the contract was determinable in nature by ninety days notice as per the terms & conditions of agreement Ex. P.2, hence cannot be enforced as per Section 14 (1) (c) of the Act, 1963. When there is no specific performance of the contract, there cannot be any declaration with regard to the reinstatement of the services of the plaintiff and injunction to continue such service contract as per Section 41 (e) of the Act, 1963. In view of the above discussion, the plaintiff is not entitled for reinstatement of his services. Further, the services of the plaintiff were terminated as per contract of the employment. Accordingly, issues no (s). 1, 2 and 5 are decided in favour of the defendant.

Issue no. 3

9. The onus to prove issue no. 3 was upon the plaintiff.

9.1. The plaintiff has sought recovery of outstanding amount of salary from the month of June 2014 to October 2014 for a period of five months at the rate of Rs.68,447/- amounting to Rs.3,42,235/- alongwith gratuity at the rate of Rs.13,890/- per annum amounting to Rs.5,788/-. It is admitted fact that notice of dispensation of his services was issued upon plaintiff on 02.06.2014 with a notice period of ninety days. It is alleged by the defendant that a cheque for Rs.1,84,100/- was sent with this notice, the receipt of which is disputed by the plaintiff. A perusal of employment agreement Ex. P.2 clearly indicates that services are liable to be terminated by giving ninety days notice or on CS No: 7797/16 Page no. 25 of 28 payment of ninety days gross salary in lieu of the notice. This clearly indicates that plaintiff is entitled for three months from 02.06.2014 which can be calculated as Rs.2,05,341/- (Rs.68,447/- X 3 months). It has also been admitted by the plaintiff that a sum of Rs.53875/- was deposited in his account on July 02, 2014, thus the plaintiff is entitled for the balance amount of Rs.1,51,466/- alongwith interest from the defendant as salary in lieu of notice. There is no substance in the contention of the plaintiff for claiming 5 months salary from June 2014 onwards when the terms of employment agreement are very clear and unambiguous.

9.2. Now, adverting to the claim of gratuity, it is admitted by the plaintiff that a sum of Rs.96,162/- was deposited in his bank account on 09.07.2014 towards gratuity. However, he has further claimed Rs.5,788/- being the same for five months of gratuity out of Rs.13,890/- per annum. It is to be understood that when the notice period is for three months, the gratuity during the notice period has to be reckoned for three months which comes to Rs.3,472/-. The claim of the plaintiff towards gratuity is restricted to this amount.

9.3. In view of above discussion, plaintiff is entitled for Rs.1,51,466/- as salary in lieu of notice period and Rs.3,472/- towards gratuity in total Rs.1,54,938/- alongwith interest @ 6% per annum from defendant. The issue no. 3 is decided in favour of plaintiff.

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Issue no. 4

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10. The onus to prove issue no. 4 was upon the defendant.

10.1. So far as the question about quantum of damages is concerned, the plaintiff has prayed that he is entitled for Rs.5,00,000/- , however, he has failed to lead any evidence in this regard and hence he is not entitled for recovery of any amount as prayed for towards damages. This issue is accordingly adjudicated against plaintiff.

Issue no. 6

11. The onus to prove this issue was upon the defendant.

11.1 It is a contention of the defendant that a cheque for a sum of Rs.1,84,100/- in lieu of ninety days notice was sent to the plaintiff alongwith the termination letter Ex. P.3. The plaintiff disputed about the receipt of aforesaid cheque and the defendant has not established as to whether the same has been encashed by the plaintiff. The defendant even could not produce photocopy of the said cheque. Under such circumstances, the alleged payment through this cheque has to be treated as not paid and the claim of the plaintiff is to be decided as if no such cheque has been paid. As observed in issue no. 3, the plaintiff is entitled for Rs.1,54,938/- from the defendant, this issue is accordingly decided against the defendant.

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12. In view of above discussion, the plaintiff is entitled for Rs.1,54,938/- alongwith interest @ 6% per annum from September 2014 till realization of amount alongwith cost. Decree sheet be prepared accordingly.

File be consigned to record room.

Pronounced in the Open Court on 29.04.2017 (Vineeta Goyal) Additional District Judge-03 South District: Saket: New Delhi CS No: 7797/16 Page no. 28 of 28