



2026:DHC:5053



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

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*Reserved on: 27<sup>th</sup> Feb, 2025*  
*Pronounced on: 29<sup>th</sup> May, 2026*

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**RSA 160/2022, CM APPL. 54473/2022**

**MAHENDRA KUMAR MISRA**

S/o Late Sri Bal Mukund Mishra

R/o C-61, DLF,

Dilshad Extension-II, Sahibabad,

Ghaziabad-201005

.....Appellant

Through: Mr. Manoj Kumar Srivastawa and  
Mr. Akshansh Harsh, Advocates

versus

**1. MANAGING DIRECTOR TATA AIA LIFE INSURANCE  
COMPANY LIMITED**

Registered & Corporate Office, 4th Floor,

Tower-A, Peninsula Business Park,

Senapati Bapat Marg, Lower Parel,

Mumbai-400013

**Also at:**

M-4, Mezzanine Floor, Kanchenjunga Building,

18, Barakhamba Road, New Delhi-110001

**2. V. NATARAJAN**

Vice-President & Zone Head

Human Resources

Tata AIA Life Insurance Co. Ltd.

M-4, Mezzanine Floor, Kanchenjunga Building,

18, Barakhamba Road,

New Delhi-110001

**3. AJAY NARANG**

Zonal Chief



Tata AIA Life Insurance Co. Ltd.  
M-4, Mezzanine Floor, Kanchenjunga Building,  
18, Barakhamba Road,  
New Delhi-110001

.....Respondents

Through: Mr. Joydip Bhattacharya and Ms.  
Ipsita Biswal, Advocates

**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. The present **Regular Second Appeal** under Section 100 of the Civil Procedure Code, 1908 (*hereinafter referred to as 'CPC'*) has been filed against the Judgement dated 28.03.2022, whereby the learned First Appellate Court upheld the Judgement and Decree dated 01.05.2017, passed by the **learned Civil Judge, dismissing the Suit for Declaration, Mandatory and Permanent Injunction.**
2. The Plaintiff/Appellant had filed a **Civil Suit bearing CS No. 51/2014 (later re-numbered as CS No. 57492/2016)** seeking a declaration in his favour and against the Defendants/ Respondents that the **Letter of Termination dated 05.02.2013**, was illegal and he continued to remain in service and is entitled to the consequential reliefs. The Plaintiff/Appellant had also sought **Permanent and Mandatory Injunction** for directing the Defendants/ Respondents to treat the Plaintiff/Appellant, to have continued to remain in their service from the date, he was removed arbitrarily from the service.
3. The **brief facts** of the case are that the Plaintiff/Appellant had joined as a Sales Manager in the Defendant/Respondent Company, on 04.08.2008,



after accepting the terms and conditions laid down in the appointment letter dated 01.08.2008. He was promoted as a senior Sales Manager w.e.f. 01.12.2009, *vide* dated 11.01.2010. However, the Terms and Conditions of his employment remained the same. Subsequently, by an e-mail dated 29.11.2012, the Plaintiff/Appellant was exited w.e.f. 30.11.2012 with notice pay for one month. Thereafter, he went on an emergency leave from 01.12.2012 to 06.12.2012, because of severe health issues.

4. He had submitted a ***Leave Application*** on 01.12.2012, in response to which, he was asked to show his medical documents, which he could not submit. Ultimately, *vide* Letter dated 06.02.2013, the Plaintiff/Appellant was informed about termination of his services with immediate effect, with intimation that full and final settlement amount would be paid to him.

5. It is the Plaintiff/Appellant's case that the statement accompanying the settlement amount, mentions that the Plaintiff/Appellant had resigned from the job on 06.02.2013, post which he sent a legal notice to the Defendants/Respondents which was replied *vide* Letter dated 25.09.2013. **The Plaintiff/Appellant, thereafter, filed a suit seeking a Declaration, Permanent and Mandatory Injunction.**

6. The Defendants/Respondents, *in the Written Statement*, stated that the Plaintiff/Appellant had not approached the Court with clean hands. It was contended by the Defendants/Respondents that the Plaintiff/Appellant had failed to achieve the targets set by Defendant no.1/Respondent No. 1 which he was required to do, to maintain his performance levels, as per the Terms and Conditions of his Appointment Letter dated 01.08.2008. Soon after his promotion as Senior Sales Manager, the performance of the



Plaintiff/Appellant started to decline and his work was not as per the expectations of the new rank.

7. Further, the Plaintiff/Appellant had gone on sick leave and stopped reporting to office, after 01.12.2012. The Plaintiff/Appellant then stopped taking calls from Defendant no.1/Respondent No. 1, which left the Defendant no.1/Respondent No. 1 with no choice, but to terminate the Plaintiff/Appellant's services *vide* letter dated 06.02.2013.

8. On *merits*, all other averments made in the Plaint were denied.

9. In the *Replication*, the Plaintiff reiterated and reaffirmed the contents of the Plaint and denied all the averments made in the Written Statements. The Plaintiff/Appellant denied that he failed to achieve the targets provided by the Defendant no. 1/Respondent No. 1; rather he claimed that he gave an outstanding performance throughout his employment with the Defendants/Respondents. The Plaintiff/Appellant pointed out that it is admitted by the Defendants/Respondents that the Plaintiff/Appellant's was satisfactory after joining Defendant No. 1/Respondent No. 1 and that the Plaintiff/Appellant has been rewarded for his performance, by getting promoted and salary increment.

10. On the basis of the pleadings, of the parties, *the following Issues were framed on 29.08.2014:*

*“(i) Whether the suit is not maintainable due to lack of cause of action, as the job assigned to the Plaintiff was performance oriented job and plaintiff has not worked up to the expectation and requirement of the post? OPD.*

*(ii) Whether the Plaintiff has not approached the Courts with clean hands and has misrepresented the facts? OPD.*



*(iii) Whether the Plaintiff is entitled for decree of declaration thereby declaring that the termination order by or on behalf of the defendants was Illegal? OPP.*

*(iv) Whether the plaintiff is entitled for decree of permanent and mandatory injunction declaration thereby directing the Defendant to treat the plaintiff as to have continued to remain In their service from the date when he was removed from the services, arbitrarily and illegally and also whether the Plaintiff is entitled for consequential reliefs such as reinstatement and compensation? OPP.*

*(v) Relief.”*

**11.** In support of their case, the Plaintiff/Appellant examined himself as **PW-1** and tendered his evidence as **Ex. PW1/X**, wherein he relied upon copy of appointment letter as Ex. PW-1/1; Copy of letter dated 11.01.2010 as Ex. PW-1/2; Copy of Unit Manager Performance Improve Plan Form as Ex.PW1/3; Copy of e-mail dated 29.11.2012 sent by Sh. Rohit Sharma, Manager to the Plaintiff/Appellant as PW-1/4; Copy of leave application as PW-1/5; E-mail sent by the Plaintiff/Appellant to V Natarajan and Rohit Sharma as PW-1/6; Medical prescriptions dated 11.12.2012, 14.12.2012, 17.12.2012, 19.12.2012 along with medicine slips as PW-1/7; Termination letter dated 06.02.2013 of the Plaintiff/Appellant as PW-1/8; Statement of full and final settlement of the Plaintiff/Appellant as PW-1/9; Legal notice sent to the Defendants by the Plaintiff/Appellant along with UPC receipts as PW-1/10; Reply dated 25.09.2013 to the legal notice of the Plaintiff/Appellant sent by the Defendants/Respondents as PW-1/11; and Service Certificate of the Plaintiff/Appellant dated 04.06.2013 as PW-1/12.



**12. PW-2, Shyam Khandelwal**, the doctor who examined the Plaintiff for jaundice, tendered his evidence by way of affidavit. In his affidavit, he affirmed that the prescription slips exhibited on record were issued by him to the Plaintiff/Appellant. He relied upon the prescription slips dated 11.12.2012, 14.12.2012 and 17.12.2012 as PW-2/1 to PW-2/3; medical certificate dated 17.12.2012 as PW-2/4; and prescription slip dated 19.12.2012 as PW-2/5.

**13.** On behalf of the Defendant/Respondent, **Sh. Mukesh Kumar**, appeared as **DW-1** and tendered his evidence by way of affidavit Ex. DW-1/A. Thereafter Ld. Counsel for the Defendants/Respondents made a statement that he does not wish to adduce any other witness.

**14.** The learned Trial Court upon appreciation of the evidence, took note of the admitted position that the Plaintiff/Appellant received the termination letter along with full and final settlement and also one month Notice pay. Hence, in view of Clause 11 of the Appointment Letter that states “*employment may be terminated by the company without assigning any reason by giving 14 days notice while on probation and 30 days notice after confirmation or on payment of salary in lieu of notice period*” and the admitted receipt of one month's notice pay, the learned Trial Court held that the termination was in accordance with the terms of the contract and was therefore legal and valid.

**15.** Further, it was held that the Plaintiff/Appellant was not entitled to any relief under Section 14 of the Specific Relief Act, as the present contract of employment between the Plaintiff/Appellant and the



Defendants/Respondents, is determinable and cannot be specifically enforced. Consequently, *the Suit was dismissed*.

16. Aggrieved by the Judgement and Decree dated 01.05.2017, the Plaintiff/Appellant preferred a **First Appeal under Section 96 read with Order XLI Rule 1 of CPC**.

17. The Plaintiff/Appellant challenged principally on grounds that Learned Trial Court erred in holding that a contractual Employment is not specifically enforceable in view of Section 14 of the Specific Relief Act and only relief of damages can be granted to the Appellant; yet without awarding any damages, the suit was dismissed.

18. The First Appellate Court, upon re-appreciation of the record, **confirmed the findings of the Trial Court, that** the relationship of master and servant between the parties, was purely contractual and a contract of personal service is not specifically enforceable, in terms of Section 14 of the Specific Relief Act.

19. Therefore, it was concluded that the Plaintiff/Appellant had failed to establish any legal right to continue service after termination of contract of employment. **Accordingly, the First Appeal was dismissed vide Judgement dated 28.03.2022.**

20. Aggrieved thereby, the present **Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 has been preferred by the Appellant.**

21. The *grounds of challenge* are that the Courts below, have erred in failing to appreciate that the act of the Respondents, as employer, in terminating the Plaintiff/Appellant from permanent employment, was a quasi-judicial function, and that the Defendants/Respondents were under a



legal duty to adhere to the *First Principle of Natural Justice*, prior to passing the termination letter. The two Courts have failed to draw the necessary inference that the Plaintiff/Appellant, being a permanent employee, was illegally and erroneously deprived of a Show Cause Notice and a departmental inquiry, thereby rendering the *Termination Letter* dated 06.02.2013, unsustainable in law and liable to be set aside.

**22.** It is further contended that the Termination Letter dated 06.02.2013, is vitiated by the principles enunciated in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, (1948) 1KB223*, being outrageous, in defiance of logic, arrived at unreasonably, and passed in bad faith, thereby warranting interference of this Hon'ble Court.

**23.** It is further submitted that the Courts below, erred in not appreciating that the premature termination of the Plaintiff/Appellant prior to attaining the age of superannuation, fixed at 58 years under the Appointment Letter, without any finding of misconduct or misbehaviour against him, constitutes a *breach of the Contract of Employment dated 01.08.2008*, rendering the Termination Order dated 05.02.2013 illegal, which is liable to be set aside, *entitling the Plaintiff/Appellant to reinstatement or, in the alternative, to damages and compensation.*

**24.** It is further contended that the Courts below, erred in not appreciating that the Termination Letter was without any reasons, by mere *ipse dixit*, whereas the onus was upon the Defendants/Respondents, to disclose justifiable grounds amenable to judicial scrutiny, as mandated in *L. Michael and Another v. M/s. Johnson Pumps Ltd., AIR 1975 SC 661.*

**25.** It is further submitted that Clauses 9 and 10 of the Appointment Letter, as invoked in the termination letter, relate to operative fitness and



utility, requiring examination under an objective, reasonable person standard. The Defendants/Respondents adduced no objective evidence, to sustain the termination, and the Courts below failed to appreciate this distinction.

**26.** It is further contended that the opinion that the Plaintiff/Appellant had become ineffective as Senior Sales Manager was wholly *honest*; no objective test having been applied. Even subjective satisfaction must rest on objective considerations, as affirmed in L. Michael (supra) and Khudiram Das v. State of West Bengal, AIR 1975 SC 550. The Defendants/Respondents failed to adduce even a scintilla of evidence, to sustain the termination letter.

**27.** It is asserted that the Termination Letter is perverse in ignoring the Plaintiff/Appellant's medical evidence, including a Certificate from a competent doctor confirming jaundice, which was *mala fide* disregarded to deny legitimate medical leave, in contravention of the Fundamental Right to Health, recognised in Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

**28.** It is further submitted that the Plaintiff/Appellant was illegally denied the opportunity of a *Performance Improvement Plan*, in contravention of Clause 9 of the Appointment Letter dated 01.08.2008, rendering the Termination Order *mala fide*, and liable to be set aside.

**29.** It is further contended that the Contract of Employment dated 01.08.2008 was a *contract for service* and not a *contract of service*, and did not envisage payment of compensation upon breach, and was not determinable within the meaning of Section 14 of the Specific Relief Act, 1963, thereby entitling the Plaintiff/Appellant to the relief of reinstatement.



30. Furthermore, it is asserted that the Judgment dated 28.03.2022 is arbitrary, having been rendered in disregard of material evidence including the Medical Certificate, Medical Bills, Promotion Letter, and Performance Report of the Appellant, and is accordingly liable to be set aside.

31. The Plaintiff/Appellant has proposed following substantial questions of law:

- (i) *Whether the act of the Respondents qua employer terminating the appellant from employment was per se quasi-judicial function and whether the respondents were under legal duties to resort to the First Principle of Natural Justice inter alia Show Cause Letter and Inquiry?*
- (ii) *Whether the Termination of the Appellant from the Employment of the Respondents @ the age of 45 years on the Ground of old age is legal & justified when the retirement age by way of superannuation is pegged at 58 years?*
- (iii) *Whether the clause of contract relating to “operative fitness, utility or marketability of the contract of employment” is to be examined under an objective, reasonable person standard or an objective standard of reasonableness?*
- (iv) *Whether the satisfaction of an employer is subjected to an objective test to judge reasonable exercise of discretion?*
- (v) *Whether the onus of proof lies on the Respondent Company to establish that all due process and procedure were followed before issuance of the Order of Termination dated 06.02.2013?*



- (vi) *Whether the respondent no.1 qua a Private Company Registered under the Companies Act, 1956 is liable to adhere the First Principle, the Principles of Natural Justice?*
- (vii) *Whether the act of termination of Employment by the Respondents was a quasi-judicial function?*
- (viii) *Whether the Termination of Employment dated 06.02.2013 issued by the respondents is vitiated by the principles of natural justice and Wednesbury Principles?*
- (ix) *Whether the Termination of Employment dated 06.02.2013 issued by the respondents amounts to Breach of Contract?*
- (x) *Whether the appellant is entitled to damages and compensation for Breach of Contract as per law?*
- (xi) *Whether the appellant is entitled to medical leave and whether the Termination of the Employment was contravention of the Fundamental Right to Health, a facet of the Right to life enshrined Article 21 of the Constitution of India?*
- (xii) *Whether the appellant is entitled for the Decree of Declaration that the Order of Termination dated 06.02.2013 of the Respondents was illegal and unjustified?*
- (xiii) *Whether the appellant was denied, an opportunity to “performance improvement plan” in sheer contravention of Clause 9 of the Appointment Letter dated 01.08.2008 & whether the Termination Order dated 06.02.2013 is vitiated by the said Clause 9?*
- (xiv) *Whether the Contract of employment dated 01.08.2008 was such a Contract under Section 14 of the Specific Relief Act,*



*1963 where the Court cannot interfere or supervise the Contract?*

- (xv) *Whether the Contract of Employment dated, 01.08.2008 is a Contract of Personal Service under the Contract Jurisprudence read with Section 14 of the Specific Relief Act, 1963?*
- (xvi) *Whether the Contract of Employment dated 01.08.2008 is a Contract for and not Contract of?*
- (xvii) *Whether the appellant is entitled for reinstatement of service against the respondent and in lieu thereof whether the appellant is entitled for compensation or damages?*
- (xviii) *Whether the impugned Judgement & Decree dated 28.03.2022 is erroneous and illegal on the facts as well as on the law?*
- (xix) *Whether the impugned Judgement & Decree dated 28.03.2022 is perverse & arbitrary and liable to be set aside?*
- (xx) *Whether the Order of Termination dated 06.02.2013 is arbitrary, mala fide & illegal?*

**Submissions heard and records perused.**

**32.** At the outset, it is to be noted that the scope of interference in a Regular Second Appeal under Section 100 of CPC is confined to *substantial question of law*. The concurrent findings of fact cannot be inferred with, unless shown to be perverse or based on misapplication of law.

***Analysis:***

**33.** The contract of employment between the parties was purely bilateral and consensual in nature, governed by the terms of the Appointment Letter dated 01.08.2008. *Clause 11 of the said Appointment Letter* expressly provided that the employment could be terminated by the Company, without



assigning any reason, *upon giving 30 days' notice or payment of salary in lieu thereof after confirmation.* It reads as under:

*“11. Your employment shall be terminated by the company without assigning any reason **by giving 14 days notice** while on probation and 30 days notice after confirmation **or on payment of salary in lieu of notice period.**”*

**34.** It is an admitted and undisputed fact on record that the Plaintiff/Appellant received the termination letter dated 06.02.2013 along with the full and final settlement and one month's Notice pay, in compliance with the said contractual stipulation.

**35.** Furthermore, a bare perusal of the termination letter dated 06.02.2013 reveals that the termination of the Plaintiff/Appellant's services was expressly made subject to the clauses of the Appointment Letter dated 01.08.2008. Clause 11 of the said Appointment Letter, which confers upon the employer an unqualified right to terminate the services of an employee without assigning any reason, upon giving 30 days' notice or payment of salary in lieu thereof, is therefore squarely attracted.

**36.** It is an admitted and undisputed fact on record that the Plaintiff/Appellant was paid one-month's salary in lieu of Notice along with the full and final settlement, thereby establishing complete compliance with the said contractual stipulation. The termination, being in strict conformity with the mutually agreed contractual terms, cannot be assailed as illegal or arbitrary. The question of applicability of the Principles of Natural Justice to a private employer in a purely contractual relationship, which not a quasi-judicial procedure, cannot be invoked herein.



**37.** The Appellant contended that he was approximately 45 years, when the age of superannuation was pegged at 58 years. By this alleged termination, his working age could not have been stunted. This contention does not merit acceptance. The age of superannuation represents the outer limit of employment i.e. the maximum tenure beyond which an employee cannot be continued in service. It does not, either expressly or by necessary implication, confer an indefeasible right on the employee to continue in service until superannuation. The Appellant, having accepted the Appointment with full knowledge of Clause 11, cannot now be heard to contend that his employment was protected until the age of 58 years, against the exercise of the contractual right of termination. This submission, therefore, does not raise any substantial question of law.

**38.** The Plaintiff/Appellant has further contended that the Defendants/Respondents failed to place on record any documentary evidence to demonstrate that the Plaintiff/Appellant did not achieve the performance targets, and that the termination on the ground of “*low performance and higher age*” was without basis. Both the Courts have held that the validity of the termination did not depend upon proof of low performance, since under Clause 11 of the Appointment Letter; the Defendants/Respondents were entitled to terminate the services of the Plaintiff/Appellant without assigning any reason, upon payment of the requisite notice pay.

**39.** This is a finding of fact and does not raise a substantial question of law.

**40.** The Plaintiff/Appellant has urged that if reinstatement was not permissible under Section 14 of the Specific Relief Act, 1963, the courts



below erred in not awarding damages. A perusal of the plaint reveals that the Plaintiff/Appellant neither specifically claimed a liquidated sum of damages nor led any evidence on the quantum of compensation or damages, allegedly suffered by him. In the absence of a specific pleading of damages along with a quantified claim, and evidence in support thereof, the courts below could not have *suo moto* awarded damages, as provided in Section 40(2) of the Specific Relief Act, 1963. Therefore, damages/compensation could not be granted by the First Appellate Court.

***Conclusion:***

**41.** In view of the aforesaid, it is held that both the courts have rightly dismissed the suit for Declaration, Mandatory and Permanent Injunction. *There is no substantial question of law raised for consideration, in the present Appeal.*

**42.** There is no merit in the present Appeal, which is hereby, **dismissed**, along with pending Applications.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**MAY 29, 2026/R**