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

% ***Reserved on: 25.01.2021***
Pronounced on: 10.02.2021

\+ W.P.(C) 4617/2020
PARAS KHUTTAN ..... Petitioner
Through: Mr. Anuj Aggarwal, Advocate

versus

GAIL (INDIA) LTD. & ANR. ..... Respondents
Through: Ms. Purnima Maheshwari, Advocate

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. By way of the present writ petition, Petitioner assails the letter dated 03.07.2020, whereby representation of the Petitioner dated 27.05.2020 seeking refund of Rs. 1,74,253/- was rejected and he was informed that since the Petitioner had failed to give the required notice before tendering resignation and the money sought to be recovered was paid in lieu of the two months' notice, he was not entitled to refund of the amount. A direction is also sought to Respondent No. 1 by way of mandamus to refund the said amount to the Petitioner along with interest @ 12% per annum with effect from 07.02.2020 till the date of payment.

2. The brief and relevant facts as set out in the petition are that Respondent No. 1 issued an Advertisement in October 2018 for appointment on various posts, including the post of Manager (Law) under a special recruitment drive. Petitioner being a law professional and while

working in another Public Sector Undertaking, applied for the post of Manager (Law), in November 2018.

3. On 25.03.2019, the shortlisted candidates were called for interview for the post of Manager (Law) and the Petitioner successfully cleared the interview. An offer letter dated 30.07.2019 was sent to the Petitioner enclosing therewith the Terms and Conditions of the employment.

4. On 13.12.2019, Petitioner joined the services of Respondent No. 1 as Manager (Law), retaining a lien of one year on his post with the previous employer, i.e. REC Limited. Petitioner was posted at the Corporate Office, where he worked for about one month.

5. Having worked for a short span, Petitioner on 15.01.2020 submitted his resignation and requested for being relieved by 22.01.2020. As per the case set out by the Petitioner, he had categorically stated in the letter that being on probation, he was not required to serve notice and relied on the terms of the offer letter. However, instead of being relieved on acceptance of the resignation, Petitioner was informed vide e-mail dated 23.01.2020 that he was required to serve three months' notice as per the GAIL General Terms and Conditions of Service Rules (hereinafter called the GAIL Rules). Petitioner claims that he thereafter met the concerned officers to ascertain the provisions which required him to serve a three months' notice and also sent a written representation dated 27.01.2020.

6. In the representation dated 27.01.2020, Petitioner while contesting the requirement of three months' notice, represented to the Respondents that in case the Department was of the view that three months' notice was applicable, then the Petitioner would continue in service till 18.02.2020

and requested for waiver of the balance two months' period. Petitioner also expressed his willingness to pay in lieu of two months' notice in case the same was not waived.

7. Acting on the representation, Respondents vide e-mail dated 05.02.2020 informed the Petitioner that his resignation had been accepted, subject to payment of two months' pay as the request for waiver could not be accepted. Petitioner was thereafter directed to pay Rs. 1,74,253/- towards the two months' notice period, which he deposited and, on such deposit, Petitioner was relieved on 17.02.2020 from service of the Respondents.

8. After being relieved, Petitioner sent a representation on 27.05.2020 and sought for recalling the decision for payment of money in lieu of notice and requested for a refund of the amount paid. The representation was however rejected by the Respondents and the decision was communicated vide the impugned letter dated 03.07.2020.

9. Learned counsel for the Petitioner assailing the impugned decision of the Respondents contends that there is no Rule/Regulation or any term in the offer/appointment letter, which requires a probationer to serve three months' notice or pay salary in lieu of the notice period for acceptance of the resignation. Admittedly, the Petitioner was a probationer when he tendered his resignation and thus the Respondents have illegally imposed the said condition on the Petitioner and directed him to pay Rs.1,74,253/- being the amount equivalent to two months' salary and erroneously declined to waive the notice.

10. It is argued that Respondents failed to take into consideration Clause 2(a) of Annexure-II of offer letter dated 30.07.2019, which clearly

provides that during probation, services of the Petitioner were liable to be terminated at any time, without notice or without assigning any reason. Likewise, Petitioner could resign without any notice and there is no provision which mandated serving a three months' notice or paying in lieu thereof. It is submitted that it is stipulated in the offer letter itself that three months' notice would be required only after the Petitioner completed the probation period and was a confirmed employee. Thus, the act of the Respondents in collecting money from the Petitioner towards notice period is without any authority of law and amounts to unjust enrichment. It is also argued that even under Rule 7 of the GAIL Rules there is no provision requiring a probationer to tender notice as a pre-condition for resignation.

11. It is next contended that if both category of employees viz. probationer and regular are required to serve three months' notice for resignation, there would be no difference between the two classes of persons and this shall be contrary to the Rules, which clearly envisage a distinction between the two sets of employees. Respondents cannot treat the Petitioner as a regular employee, once it is undisputed, that he was a probationer at the relevant time. It is argued that under Rule 8.1 of the Terms and Conditions governing the parties, it is clearly mentioned that the management may at any time discharge an employee from service by giving notice for the period mentioned therein or by payment of wages in lieu of such notice. Similarly, the employee is required to give the same notice in the event of his intention to leave the service of the Company. The same principle should have been applied in the present case in as much as if the Respondents had the right to terminate the services of the

Petitioner without notice as a probationer, then the Petitioner also has a similar right to submit resignation without notice during the probation period.

12. Respondents filed a detailed counter affidavit opposing the petition. Learned counsel for the Respondents vehemently opposing the relief sought argued that the Petitioner, on being informed of the GAIL Rules, with regard to resignation, vide e-mail dated 23.01.2020, clearly responded in his representation dated 27.01.2020 seeking waiver of the two months' notice and further stated that in case the waiver was not granted, he was willing to pay in lieu of the notice. Petitioner, undisputedly, voluntarily served one month's notice and never asserted that he should be relieved immediately in terms of Clause 2(a) and (b) of the offer letter, as is being argued before this Court. It is contended by the counsel that in fact the conduct of the Petitioner in filing the present petition and seeking refund borders on dishonesty. Having expressed the willingness to pay and leading the Respondents into accepting the resignation, the Petitioner seeks to recover the money on being relieved and enrich himself unjustly.

13. Learned counsel for the Respondents invokes the Doctrine of Estoppel against the Petitioner and contends that the Petitioner by his categorical representation to pay salary in lieu of two months' notice cannot now turn around and seek a refund, once the Respondents have changed their position based on the said representation. Had the Petitioner not paid salary in lieu of the two months' notice, Respondents would not have accepted the resignation as the Rules clearly mandate serving three months' notice or payment in lieu thereof, for acceptance of

resignation. Learned counsel relies on the judgement of the Supreme Court in ***B.L. Sreedhar vs. K.M. Munireddy (2003) 2 SCC 355***, more particularly para 30 which is as follows:

> *"30. If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question the legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct."*

14. Learned counsel further submits that even otherwise the Petitioner is not correct in contending that the Rules do not provide for a three months' notice or payment in lieu thereof for acceptance of resignation. Reliance is placed on Rule 8.2 of the GAIL Rules. It is pointed out that it was clearly mentioned in the offer letter dated 30.07.2019, in Rule 11 as well as in Rule 7 of Annexure-II that the GAIL Rules shall be a part of the service conditions of the Petitioner.

15. In Rejoinder, it is argued by learned counsel for the Petitioner that Respondents cannot plead Estoppel against the Petitioner as a bare perusal of the representation dated 27.01.2020 would show that the Petitioner had contested the position of requiring to serve a three months' notice. The representation was a response to an e-mail dated 23.01.2020 from the Respondents and the Petitioner had in as many words stated that the amount towards two months' notice would be paid only if the Respondents came to a conclusion, after considering the plea of the Petitioner, that there was no requirement under the Rules to serve a

notice. Respondents clearly did not even consider the legal plea that the requirement of three months' notice was not applicable in the case of a probationer.

16. It is next contended that the Petitioner was in an unequal bargaining position and at the mercy of the Respondents for accepting the resignation and issuing an NOC. He was in an unenviable position where he had no option except to pay the money for being relieved. It is reiterated that the demand to pay in lieu of the notice was contrary to terms of the appointment letter and the GAIL Rules.

17. Elaborating the argument on Estoppel, learned counsel submits that Estoppel cannot be set out as a defence against the Petitioner. In order to invoke the Doctrine of Estoppel two factors must co-exist, firstly, the other side acts on the basis of the representation and secondly, alters its position to its detriment, acting on the representation. Both the factors, it is argued, are missing in the present case. At the time of tendering the resignation, Petitioner did not offer to serve any notice or pay in lieu thereof. It is only subsequently that the Petitioner paid in lieu of the two months' notice. Secondly, Respondents did not alter their position, as they eventually coerced the Petitioner into serving a three months' notice as a pre-condition for processing the resignation and importantly Respondents had no objection to accepting the resignation on any other ground.

18. Learned counsel relies on the judgement of the Supreme Court in Civil Appeal No. 2773/2020 titled ***Ultratech Cement Ltd. & Ors. vs. State of Rajasthan & Ors.*** decided on 17.07.2020, to argue that Rule of Promissory Estoppel cannot be invoked for enforcement of a promise or

declaration which is contrary to law or outside the authority or power of an employer or the person making the promise. Reliance is also placed on the judgement of the Supreme Court in ***Shri Vallabh Glass Works Ltd. & Ors. Vs. Union of India & Ors. AIR 1984 SC 971*** and Civil Appeal No. 5943-5945/1997 titled ***Dr. Karan Singh vs. State of Jammu & Kashmir & Ors.*** decided on 13.04.2004, in addition to the judgement in Civil Appeal No. 1597/1972 titled ***Motilal Padampat Super Mills Co. Ltd. vs. State of Uttar Pradesh & Ors.*** decided on 12.12.1978.

19. In support of the argument of unequal bargaining power between an employer and employee, Petitioner has placed reliance on the judgement of the Supreme Court in Civil Appeal Nos. 4412 & 4413/1985 titled ***Central Inland Water Transport Corporation Limited & Ors. vs. Brojo Nath Ganguly & Ors.*** decided on 06.04.1986 and a judgement of this Court in C.W. No. 3406/1990 titled ***Lt. Col. A.K. Dogra vs. Indian Railway Construction Company Ltd. & Ors.*** decided on 27.05.1991. Petitioner propounded yet another argument that his case is covered under provisions of Section 72 of the Indian Contract Act and the present case is a case of mistake of law as well as coercion exercised by the Respondents. It is argued that Petitioner's case is akin to that of a contractor whose payment is contingent upon signing of "no claim certificate" as the Respondents would not have processed his resignation having not paid the amount demanded. Reliance is placed on the judgement of a Coordinate Bench of this Court in W.P.(C) 10406/2016 titled ***M/s. Ambience Developers & Infrastructure Pvt. Ltd. vs. Punjab National Bank*** decided on 09.07.2018, wherein the Petitioner after paying the repayment charges, challenged the levy before this Court.

20. Lastly, the Petitioner relied on the judgement of the High Court of Calcutta in ***Medha Moitra vs. Union of India and Ors.***, W.P.C.T. 32/2019, decided on 13.09.2019, wherein the Court held that the Respondents were not justified in laying a demand of money being deposited as a pre-condition for accepting a resignation, on account of infringement of the conditions of a Service Bond, which had been furnished by the Petitioner therein, at the time of her appointment. ***Nitin Gupta vs. Post Graduate Institute of Medical Education and Research***, WP(C) No.12096/2005, decided on 07.07.2005, a judgment of the Punjab and Haryana High Court is relied upon by the counsel for the Petitioner, wherein the Court observed that the condition in the appointment letter requiring the Petitioner to refund the money paid on account of pay and allowances, etc. in case he resigned during probation, created an unconscionable contract and was unfair and unreasonable. The Court allowed the writ petition directing the Institute to refund the amount deposited by the Petitioner towards his salary on account of the condition in the appointment letter.

21. I have heard the learned counsels for the parties and examined their rival contentions.

22. After hearing the counsels for the parties, two issues arise for consideration of this Court in the present writ petition as follows :-

(a). Whether the Rules governing the parties required the Petitioner to serve a three months' notice or pay in lieu of such notice to enable the Respondents to process the resignation tendered by the Petitioner.

(b). Whether the conduct of the Petitioner in expressing his willingness to pay in lieu of two months' notice and for adjustment of his earned

leave, in case the two months' notice period was not waived, would prohibit him, in law, to seek a refund.

23. In order to answer the first issue, the Court would have to examine the terms and conditions of appointment of the Petitioner and the governing Rules. While it is the contention of the Petitioner that there is no Rule which requires serving a three months' notice or pay in lieu thereof, the Respondents have, per contra, clearly relied on Rule 8.2 of the GAIL Rules. It is a common ground and undisputed fact between the parties that the Rules applicable in the present case are the GAIL Rules. Rule 1.1 makes the GAIL Rules applicable to 'all' the employees. Rule 2 is with respect to Scope and Applicability of the Rules and stipulates that the Rules shall apply to 'all' employees of the Company, except for the categories specified in Rule 2.1 (i) – (iii). The exceptions as evident do not include probationers. Rule 2 is as follows :-

> *"2. Scope & Applicability*
> *2.1 These rules shall be applicable to all employees of the Company except :*
>
> *(i). Employees on deputation and / or Foreign Service unless their terms of deputation / foreign service stipulate otherwise.*
>
> *(ii). Casual / Daily rated / Part-time / ad-hoc / contract / apprentices and Trainee employees in whose case provision of other Rules specifically made, would be applicable.*
>
> *(iii). Any other employee who may be excluded, at the discretion of the Management, from operation of any or all of these rules, wholly or partially, as may be decided by the Chairman and Managing Director of the Company.*
>
> *2.2 Masculine gender also refers to feminine gender."*

24. Rule 7 contains provisions for 'Probation and Confirmation' while Rule 8 is with respect to 'Discharge and Termination' from service. Rule 7.2 provides that the period of probation, on appointment or promotion, to higher grades will be one year, during which the performance will be watched for determining the suitability for confirmation, against regular posts. Rules 7.3 to 7.6 deal with extension of probation, the manner and methodology of confirmation and the consequences of unsatisfactory probation. Rule 7.6 which is particularly significant for the present petition is as follows :-

> *"7.6 If during the probationary period or extended period of probation in respect of an employee on his first appointment in the service of the Company his performance, progress and general conduct are not found satisfactory or upto the standard required for the post, his services are liable to be terminated at any time without notice and without assigning any reason therefore. However, in respect of an employee who is placed on probation on promotion to higher grade, if his performance during the probation period or extended period of probation is not found satisfactory or upto the standard required for the post, he / she will be reverted to the pre-promoted post at any time without notice or without assigning any reason therefore."*

25. Under Rule 7.6, the Company has the power and prerogative to terminate the services of a probationer whose services are found unsatisfactory during probation or extended probation period, without notice and without assigning any reason. Perusal of Rule 7 leaves no doubt that it does not contain any provision which mandates the probationer to serve notice or pay in lieu thereof for acceptance of his resignation. In my view, this argument of the Petitioner has substance but

cannot inure to his advantage. The reason why Rule 7 has no such provision is not far to seek. The Rule as is evident only deals with the period of probation and the confirmation or discharge / termination on account of unsatisfactory service and does not deal with resignation of the employees. Since the Rule itself has no connection with resignation of an employee, the requirement of a provision with respect to notice or otherwise is rightly missing.

26. I have perused Clause 2(a) in Annexure-II of the offer letter relied upon by the Petitioner. Clause 2(a) is as follows:-

> "2. (a) *The appointee will be on probation for a period of one year from the date of appointment during which his/her performance will be watched with a view to determine his/her suitability for confirmation to the appointed post. This period, if necessary, may be extended at the discretion of Competent Authority. During probation period and/or extended period of probation, the services are liable to be terminated at any time without notice or without assigning any reasons therefore. The appointee will be issued formal orders of confirmation on satisfactory completion of probation period or the extended period of probation, as the case may be. The appointee will be considered to be continuing on probation until so confirmed in writing.*

Perusal of the Clause shows that similar to the provisions of Rule 7, this Clause only deals with the period of probation and extension thereof as well as the methodology and criteria for confirmation on satisfactory completion of probation period or extended period of probation. While the Clause deals with the power and prerogative of the management to terminate the services of an employee on probation it

does not deal with resignation. Understandably, the provision of tendering notice as a pre-condition for resignation is missing and this Clause cannot therefore enure to the advantage of the Petitioner.

27. The question that begs an answer at this stage is if there is any rule which deals with resignation and if so its applicability to a probationer. Having perused the Rules, through which both sides have taken this Court, painstakingly, I find that the provision with respect to resignation is contained in Rule 8.2 of the GAIL Rules. Rule 8.2, from its bare reading is in three parts. The first part of the Rule gives power to the Management to terminate the services of the employees in pay scales upto and including S-7 level, with one months' notice or pay in lieu thereof and likewise the employees have the liberty to leave service by a notice of the same duration. Second part of the Rule is in respect of employees in the level of E-0 and above and deals with termination by the Management or resignation by the employees by three months' notice or the period specified in the order of appointment or pay in lieu thereof. This, in my opinion, is the only Rule which deals with tendering of resignation by employees of GAIL and does not make a distinction between an employee on probation and an employee whose service is confirmed. Rule 8.2 is extracted as follows for a ready reference:

> *"8.2 In the case of employees working in the pay scales upto and including the level of S-7, their services will be liable to termination with one month's notice or pay in lieu thereof* ***by either side****. In respect of employees in the level of E-0 and the above, their services will be liable to termination by 3 month's notice (or the period as may have been specified in the order of appointment) or pay in lieu thereof* ***by either side****. An employee may be terminated at the discretion of the*

Management to adjust notice and / or shortfall of notice period against Earned Leave standing to his / her credit on the date of submission of resignation. However, the Management may, at its discretion, not accept the resignation of an employee if the competent authority has decided to initiate disciplinary proceedings against the employee or if such proceedings are already pending.

8.2.1 ET will have to give one month's notice or one month's Basic Pay and Dearness Allowance in lieu thereof in the event of his / her resigning from services of the Company during initial training-cum-probation period, including compliance of the Service Bond Agreement.
(CO/HR/Pol/P-27, dated 13.08.2010)

8.2.2 Executive Trainees joining after 6th February, 2013 shall not be required to execute 'Service Bond Agreement henceforth. However, candidates who had joined as Executive Trainees prior to 6th February 2013 and had already signed the 'Service Bond Agreement' shall continue to be governed by the terms and conditions of the same.
(CO/HR/Pol/P-23, dated 06.02.2013)"

28. This interpretation is fortified by the definition of the word "employee" in Rule 3(f) of the GAIL Rules which defines an 'employee' to mean a person engaged by the Company to do any work except for those excluded under Rule 2.1. In fact, "probationer" has also been defined in Rule 3(m) to mean an employee who is temporarily employed in a regular pay scale of the Company and placed on probation. Rules 3(f) and 3(m) are as under :-

"3(f). 'Employee' means a person engaged by the Company to do any work except those excluded under para 2 above.
3(m). 'Probationer' means an employee who is temporarily employed in a regular pay scale of the Company and placed on probation."

29. Relevant would be in this regard to refer to the offer of appointment of the Petitioner in which it was clearly stipulated that the Terms and Conditions of appointment of the Petitioner in GAIL would be as per Annexure-II, which was enclosed along with the letter. Rule 7 of Annexure-II mentioned that Terms and Conditions of service, as applicable from time to time in respect of executives in GAIL will be applicable to the appointee. A combined reading therefore of the Rules, more particularly, Rule 8.2 leads to an inevitable conclusion that the Petitioner is governed by Rule 8.2 of the GAIL Rules and that there is a mandate of the Rule that the Petitioner was required to give a three months' notice or pay in lieu thereof to enable the Respondents to process his case for acceptance of resignation. The first question is therefore, answered in favour of the Respondents and it cannot be held that there was no requirement to give a three months' notice or pay in lieu thereof by the Petitioner, as was sought to be argued by the counsel for the Petitioner.

30. Since the Rule mandates a notice of three months and the Petitioner had only given one months' notice and paid in lieu of the two months' notice, no fault can be found with the action of the Respondents in rejecting his representation for refund of an amount of Rs.1,74,253/-.

31. While this finding on the first question is sufficient to dismiss the present petition, yet as both sides have strenuously argued on the Doctrine of Estoppel, I deem it necessary to deal with the second issue. The plea of Estoppel raised by the Respondents is based on a categorical position taken by the Petitioner in his representation dated 27.01.2020.

Since this letter is the fulcrum of the argument of both sides, it would be useful to allude to its contents and therefore the letter in its entirety is extracted hereinunder for a ready reference :-

> *"Sub: Representation for waiver of Notice Period*
>
> *Respected Sir,*
>
> *1. The under-signed joined GAIL (India) Ltd. On 13.12.2019 on the post of Manager (Law). After serving for sometime, I had submitted resignation on 15.01.2020 and requested for relieving on or before 22.01.2020. I was informed vide email dated 23.01.2020 that I am required to serve 3 months' notice or salary in lieu thereof. I request that as per Clause 2(b) terms and conditions (Annexure-II) of my offer letter states that 3 months' notice period is to be given after completion of probation period. Therefore, it is requested that requirement of serving 3 months' notice period during probation period may kindly be re-considered.*
>
> *2. However, in case it still remains that I am required to serve 3 months' notice period during probation then I am submitted the humble request for waiver of two months period with a request for relieving on 17.02.2020.*
>
> *3. As I have already tendered resignation on 15.01.2020 and one month notice period will complete on 15.02.2020. I request for relieving on 17.02.2020 with a humble request that :*
>
> *i).* ***Balance 2 months' notice period may kindly be waived; and***
>
> ***ii). In case balance 2 months notice period is not waived then I am willing to pay 2 months' salary (Basic+DA) in lieu of two months' notice and my Earned Leave may be adjusted against 2 months' notice period and balance***

amount after adjustment shall be paid by me as per extant policy.

Regards
Paras Khuttan
Manager (Law)

32. The contents of the letter in my view are self explanatory and need no interpretation. The Petitioner has explicitly and in so many words stated that since he had tendered resignation on 15.01.2020 and one months' notice period would be completed on 15.02.2020, he was tendering one month's notice and requested that he be relieved on 17.02.2020. While making the said request the Petitioner offered two alternatives to the Respondents i.e. first, balance two month's notice period be waived and second, in case it could not be waived then the Petitioner was willing to pay two month's salary in lieu thereof and requested for adjustment of his earned leave. While it is true, as contended by the counsel for the Petitioner that in the first part of the letter, Petitioner had raised an issue that under Clause 2(b) of the Terms and Conditions enclosed with his offer letter, three months' notice was to be given after completion of probation period and not while the Petitioner was on probation. However, in my view, the Petitioner cannot at this stage contest this position as he had in fact not only offered to pay in lieu of the notice but had indeed paid a sum of Rs. 1,74,253/- to enable the Respondents to process his resignation. The Respondents acting on the said representation proceeded to process the case of the Petitioner for resignation and accepted the same. The categorical representation of the Petitioner indicating his willingness to pay and the actual act of payment

led the Respondents to shift their position into accepting the resignation, which they were unwilling to do prior to the said representation. In my view, therefore, all elements of the Doctrine of Estoppel come into play against the Petitioner and he is clearly estopped from contending that there was no requirement of notice at the time of tendering resignation.

33. The matter can be looked at from yet another angle. While this Court has in the earlier part of the judgment given a clear finding that the Rules governing the parties mandate a three months' notice or pay in lieu thereof by an employee even during probation for tendering resignation, yet it was certainly open at that stage to the Petitioner to contest and resist the requirement of giving notice or challenge the Rules. Respondent had all through informed the Petitioner of the rule position which specifically required him to serve a notice specifically Clause 8.2 under which they were asserting the obligation of the Petitioner. The Petitioner chose not to contest the position in any Court of law and the money was paid, without any protest. Even today, in the present petition there is no challenge to the Rule position as it is the stand of the Petitioner that there is no such provision mandating a notice, a contention which has been rejected by this Court.

34. "Estoppel" is a rule of Evidence enacted in Section 115 of the Indian Evidence Act, 1872, which clearly lays down that when one person by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon that belief, he shall not be allowed in any proceedings between him and such other person to deny the thing or retreat therefrom. ***Lord Denman in Pickard vs. Sears,***

(1837) 6 Ad & E1 469: 112 ER 179] Ad & E at page 474 ER p.181 observed as under :-

> *"But the rule of law is clear, that, where one by his words or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time;"*
>
> *"The whole doctrine of estoppel of this kind, which is a fictitious statement treated as true, might have been founded in reason, but I am not sure that it was. There is another kind of estoppel — estoppel by representation — which is founded upon reason and it is founded upon decision also." Per Jessel, M.R. in General Finance & Co. v. Liberator [(1878) 10 Ch D 15 : (1874-80) All ER Rep Ext 1597 : 39 LT 600] , Ch D at p. 20.*

35. Estoppel is based on the maxim *allegans contraria non est audiendus* (a party is not to be heard to allege the contrary) and is that species of presumption *juries et de jure* (absolute or conclusive or irrebuttable presumption), where the fact presumed is taken to be true, against that party and is a kind of argumentum ad hominem. Estoppel comes from a French word "*estoupe*" and means in English "stopped". It has been repeatedly held in various judgments that though Estoppel is a rule of evidence but it has the effect of creating substantive rights as against the person estopped and therefore may itself be a foundation of a right in favour of the Respondents. In this context, I may allude to a passage from "*Law relating to estoppel by Representation by George Spencer, 2nd Edn*. as follows :-

"It will be convenient to begin with a satisfactory definition of estoppel by representation. From a careful scrutiny and collation of the various judicial pronouncements on the subject, of which no single one is, or was perhaps intended to be, quite adequate, and many are incorrect, redundant, or slipshod in expression; the following general statement of the doctrine of estoppel by representation emerges; where one person ('the representor') had made a representation to another person ('the representee') in words or by acts and conduct, or (being under a duty to the representee to speak or act) by silence or inaction, with the intention (actual or presumptive), and with the result, of inducing the representee on the faith of such representation to alter his position to his detriment, the representor in any litigation which may afterwards take place between him and the representee, is estopped, as against the representee, from making, or attempting to establish by evidence, any averment substantially at variance with his former representation, if the representor at the proper time, and in the proper manner, objects thereto."

36. The Respondents have in this context rightly relied upon para 30 from the judgment in ***B.L. Sreedhar and Ors*** **(supra)** and which has been extracted in the earlier part of the judgment. In ***Mitra Sen Singh v. Janki Kuar [AIR 1924 PC 213]*** relying upon the judgment of the Supreme Court in ***Dr. Karan Singh*** **(supra),** the Court held as follows:-

"There is no peculiarity in the law of India as distinguished from that of England which would justify such an application. The law of India is compendiously set forth in Section 115 of the Indian Evidence Act, Act 1 of 1872. It will save a long statement by simply stating that section, which is as follows:

'When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon

such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.' "

37. A passage from ***Gyarsi Bai v. Dhansukh Lal [AIR 1965 SC 1055] : (1965) 2 SCR 154*** is also relevant wherein principles for invoking the Doctrine of Estoppel were reiterated in the following words :-

"To invoke the doctrine of estoppel three conditions must be satisfied: (1) representation by a person to another, (2) the other shall have acted upon the said representation, and (3) such action shall have been detrimental to the interests of the person to whom the representation has been made."

38. Having gone through the conspectus of the judgments referred to above and looking into the facts of the case and the clear representation made by the Petitioner, this Court is of the view that the second issue also deserves to be decided in favour of the Respondents. Accordingly, it is held that the Petitioner is clearly estopped from contesting the position that he was not required to give a three months' notice or pay in lieu thereof and is entitled to refund of the money paid.

39. In so far as the judgments relied upon by the Petitioner are concerned, with regard to the Doctrine of Estoppel, suffice would it be to state that in all the judgments as referred to above the Courts have affirmed and reiterated the principal that if a person by his conduct or representation leads to the other person altering his position, the Doctrine of Estoppel can be invoked. These judgments thus only support the case of the Respondents as all factors estopping the Petitioner exist in the present case. The judgment in ***Ultratech Cement Ltd. & Ors.*** **(supra)** is

also of no avail to the Petitioner as in the present case the Rules mandated giving a three months' notice or pay in lieu thereof and hence, unlike in that case, the Respondents herein are not enforcing a promise, which is contrary to Rules or law.

40. In so far as the judgments with regard to unequal bargaining power are relied upon by the Petitioner, suffice would it be to note that the Petitioner had the opportunity to challenge the Rules that were sought to be invoked and applied against him by the Respondents at the relevant time. There was no compulsion on the Petitioner to make a representation expressing his willingness to tender one month's notice and pay in lieu of two months' notice, which action he took voluntarily and without any force or coercion. It can be safely presumed that the Petitioner knew his rights as also the fact that he could approach a Court of law at that stage, a part on which he has chosen to tread, by filing the present petition, though of no avail at this belated stage.

41. The judgement in the case of ***Central Inland Water Transport Corporation Limited & Ors.*** **(supra)** would not help the Petitioner and is distinguishable for two clear reasons. Firstly, Rule 9(1), which was the Rule in question, gave power to the Management to terminate a permanent employee by giving a three months' notice or pay in lieu thereof and secondly, the Rule had been specifically challenged before the Court. The Rule was finally struck down by the Court as being void under Section 23 of the Indian Contract Act, 1872, as being opposed to Public Policy and ultra vires Article 14 of the Constitution for the reason and to the extent it conferred right upon the Corporation to terminate a 'permanent employee' by giving three months' notice.

42. Reliance on the judgment in ***M/s. Ambience Developers & Infrastructure Pvt. Ltd.*** **(supra)** by the counsel for the Petitioner is completely misplaced. The writ petition in the said case laid a challenge to a communication whereby the Petitioner was called upon to remit pre-payment charges and service tax in respect of term loan. The question that the Court addressed was whether the Respondents had altered the terms of sanction by waiving the right to recover pre-payment charges and the same was answered by the Court by holding that the Bank had not waived its right to receive the pre-payment charges. There is no semblance either in facts or law in the two cases.

43. In the case of ***Medha Moitra*** **(supra)**, Petitioner had approached the Court against a demand of the Respondents asking her to deposit Rs.9,60,891/- in order to accept her resignation. Petitioner therein was appointed in the Railways in the Sports quota and at the time of appointment had furnished a Bond to serve for a period of five years. Since the Petitioner tendered resignation prior to the completion of the period of five years, she was asked to pay, what according to the Respondents therein, was the amount incurred on expenditure on her salary, training and coaching, etc. The Court held the Petitioner entitled to refund of the amount on the ground that the clause to furnish such a Service Bond was akin to a contract between two unequals. In the present case, the requirement of three months' notice or pay in lieu thereof does not arise out of any specific contract or a Bond between the parties. The requirement of serving the notice along with the request for resignation has its genesis in the GAIL Rules, which governed the parties and were part of the service condition of the Petitioner. The said Rules are

uniformly applicable to all employees and at the cost of repetition are not challenged by the Petitioner. Hence unlike in the case cited by the Petitioner, in the absence of challenge to the Rule position, this Court cannot enter into the question of validity or constitutionality of the Rules.

44. In ***Nitin Gupta*** **(supra)**, the question for consideration before this Court was whether the Petitioner was entitled to refund of the salary deposited on account of a condition in his appointment letter which stipulated that if he resigned during the probation period, he would be liable to refund all the monies paid to him towards pay and allowances, etc. during the period of probation. The said case in my opinion is clearly not applicable to the case of the Petitioner in as much as in the said case the Petitioner had challenged the said condition and its legality was under consideration before the Court. Thus, in my view, none of the judgments relied upon by the counsel for the Petitioner are of any avail to further the case of the Petitioner.

45. I am fortified by my view taken in the present case, by a judgment of the Division Bench of this Court in ***Bhavya Kiran Arya v. Union of India, 2017 SCC Online Del 12619,*** wherein the Petitioner tendered her resignation and also deposited money in lieu of one month's notice. After the resignation was accepted and the Petitioner was relieved, she approached the Central Administrative Tribunal seeking refund of the money paid at the time of tendering the resignation. On being unsuccessful before the Tribunal, the Petitioner approached the Division Bench of this Court. The writ petition was dismissed by the Division Bench with the following observations :

"*8. Having heard learned counsel for the petitioner, we are not persuaded by his argument to the effect that the petitioner had tendered a simple letter of resignation without referring to Rule 5(1) of the CCS(Temporary Services) Rules, 1965 and therefore, the respondents could not have called upon her to deposit one month's salary alongwith her letter of resignation. The terms and conditions of the declaration submitted by the petitioner at the time of her appointment, leave no manner of doubt that at that point in time, she had accepted that she will not resign or quit her employment except with the prior written consent of the Head of the Department and in the event of any default, she will forfeit one month's pay.*

9. The facts as noticed above, reveal that the petitioner was appointed on 01.03.2014 and in less than two months reckoned therefrom, she had tendered her letter of resignation. On the date on which she tendered her resignation, being conscious of the stipulations contained in the declaration, the petitioner had on her own deposited one month's notice pay with the respondent No. 2, without raising any objection at that point in time. It was only after the Department completed all the requisite formalities and accepted her resignation that the petitioner first served a legal notice dated 23.05.2014 on the respondents, demanding refund of one month's salary deposited by her and then approached the Tribunal, by filing the Original Application in the month of July, 2014.

10. We are of the opinion that the Tribunal was justified in rejecting the case of the petitioner by relying on the declaration submitted by her at the time of her appointment. The petitioner cannot be permitted to wriggle out of the said declaration/undertaking after her resignation was accepted by the respondents on a specious plea that such a declaration was not required to be submitted by a Postal Assistant. If that was the case, then the petitioner should have protested at the time of her appointment and refused to

furnish the declaration. Having waived any such objection at the relevant time, the petitioner cannot be permitted to take such a plea after her resignation letter was accepted by the competent authority, in accordance with the conditions stipulated in the undertaking given by her, as referred to above."

46. For the aforesaid reasons, there is no merit in the writ petition and the same is accordingly dismissed with no order as to costs.

JYOTI SINGH, J

FEBRUARY 10th , 2021
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