

**IN THE COURT OF SH. RAHUL BHATIA
ADDITIONAL DISTRICT JUDGE-01
SOUTH-EAST DISTRICT, SAKET COURTS: NEW DELHI**

CS DJ 58-19

SANDEEP SAINI Vs. M/S ALPHA RADIOS

Sandeep Saini

.... Plaintiff

Versus

M/s Alpha Radios & Ors

.... Defendants

ORDER

1. Vide this order, I will decide the application under Order VII Rule 11 C.P.C. filed by the defendants in the present case.
2. The facts of the case are that the plaintiff was employed by defendant no. 1 on 01.12.2005. It is further submitted that the plaintiff remained in the employment of defendant no. 1 till 30.04.2018. It is further submitted that on 16.04.2018, the plaintiff was forced to resign from the services of defendant no. 1 without following any mandatory provisions of law and principles of natural justice. It is submitted that the termination of plaintiff is totally illegal, unjust and bad in law based upon this wrong termination of the plaintiff, the plaintiff has filed the present suit praying for the following:
 - a. Issue summon of the suit as this Hon'ble Court deems fit and proper and to pass a decree of declaration in favour of plaintiff and against the defendants declaring that the plaintiff is entitled to Gratuity and other emoluments from the defendant,
 - b. Pass a decree for a sum of Rs. 10,55,000/- (Rupees Ten Lacs Fifty Five Thousand only) for the Gratuity and Salary

along with interest @ 24 per annum from the date institution of the suit till its realization in favour of the plaintiff and against the defendants,

c. Pass a decree of declaration declaring termination of the plaintiff by way of refusal of duties with effect from 16.04.2018 being totally illegal, unjust, bad and mala fide,

d. Pass a decree of mandatory injunction to reinstate the plaintiff to his services with due promotion along with the increments,

e. Cost of the suit be also awarded to the plaintiff,

f. Pass such other order/orders which this Hon'ble Court may deem fit and proper in favour of the plaintiff and against the defendants.

3. Defendants have filed the present application on the following grounds:

3.1 The suit of plaintiff is not maintainable in terms of Section 14(1)(b) of Specific Relief Act, 1963, which states that contract of personal service cannot be specifically enforced.

3.2 In view of Section 8 of the Payment of Gratuity Act, gratuity cannot be claimed by way of Civil suit and has to be claimed or recovered as per Section 8 of Payment of Gratuity Act.

4. Ld. counsel for defendant has argued that prayer c and d of the prayer clause are hit by Section 14 (1)(b) of Specific Relief Act, 1963, he had sought support of the Judgment of Hon'ble Supreme Court of India in the case of Executive Committee of Vash Degree Samiti & Ors Vs. Laxmi Narayan & Ors (1976) 2 SCC 58. He has further relied upon

Section 8 of the Payment of Gratuity Act and relied upon the judgment of Hon'ble High Court of judicature Allahabad, in Asha Devi Johri Vs. Sharda Devi & Ors, civil revision no. 1787/1976.

5. Sum and substance of the arguments of the defendants is that, as this court cannot declare the termination of the plaintiff as wrongful, cannot reinstate him and cannot order the payment of the gratuity to the defendants. Therefore, the case is barred by Section 14(1)(b) of Specific Relief Act, 1963, with Section 8 of Payment of Gratuity Act. In view of the same, the plaint be rejected.
6. Per contra, Ld. Counsel for plaintiff submits that the suit is maintainable in this court. He submits that apart from the declaration sought as challenged by the Ld. Counsel for defendant, he has also sought for recovery of amount based upon his salary and other dues and, as such, his case is maintainable in this court.
7. Heard. Perused the court record.
8. As mentioned herein above, the plaintiff has sought various prayers in the present case. The defendants in order to get the plaint rejected has to show that none of the prayers made in the case can be decreed in favour of the plaintiff by this court. Even if a single prayer is maintainable in this court, the plaint cannot be rejected in part and the suit will have to continue. The plaintiff has sought an amount of Rs. 10,55,000/- as a recovery of gratuity and pending salary from the defendants. Since, this court is empowered to grant any pending salary which has not been paid as per the contract between the parties, in view of the same, to this

extent, the suit would be maintainable in this court. Even if all the arguments of the defendants are accepted, then also at least some amount which has been claimed as dues in lieu of salary would be within the jurisdiction of this court and this court has the jurisdiction to try this case. In view of the fact that some of the prayers are maintainable before this court, the plaint cannot be rejected at this stage.

9. In view of the same, the application filed by defendants under Order VII Rule 11 C.P.C. is dismissed.

**Announced in the open
Court on 07.12.2023**

**(RAHUL BHATIA)
Additional District Judge 01(SE),
Saket Courts, New Delhi.**