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GJKH020010742013



IN THE COURT OF 7th ADDITIONAL SENIOR CIVIL JUDGE AT NADIAD.

Special Civil Suit No. 216/2013

Exh.No. 96

**1] Dharamsinh Desai University,
 College Road, Nadiad,**

.....Plaintiff.

V/s.

1] Jaiprakash T. Lalchandani @ L.T.Jaiprakash

Occupation- Service

**R./O- International Institute of Information Technology, 26/ C,
 Electronic City Hauser road Bangalore-560190**

.....Defendant.

Mr. N.S.Patel, Learned Advocate for the plaintiff.

Mr. M.N.Joshi, Ld. Advocate for the Defendant

Suit For Recovery of money of Rs-56,33,480.00/-.

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

1] FACTS OF THE PLAINT

The facts of the plaintiff's suit in nut shell are to be stated as under :

a) The current plaintiff is an educational institute established under the Universities Act and is administered through its Vice Chancellor and Registrar. The plaintiff is also running other institutes like Dharmsinh Desai Institute of Technology, Pharmacy College, Commerce College, Dental College etc., and all these institutes are administered through

Registrar of the plaintiff university.

b) The defendant had joined the plaintiff governed institute Dharmsinh Desai Institute of Technology, at Nadiad on 03/07/1995 as a Lecturer and was promoted as Assistant Professor at department of Computer and Engineering. After that the defendant got permission with salaried study leave to do further study to get Ph.D. Degree. During this permission process the plaintiff university takes a bond from the defendant, which was accepted and submitted by the defendant therefore the defendant was permitted to study leave with salary.

c) Further, the terms of bond were, that the defendant shall not leave the university or resign from his service up to six year after obtaining Ph.D Degree and will also serve the plaintiff university during this period and will not join any other institute except plaintiff university. Further, if defendant will breach the condition of the bond then he shall be liable to pay the damages which will occur due to his absence and salary amount which will be paid during the study leave with the salary amount which is to be paid during six years after obtaining Degree. These conditions were accepted by the defendant by executing a bond in favour of plaintiff.

d) The defendant as per permission went to do further studies from IIT Kharagpur and after getting awarded with Ph.D Degree, rejoined the Dharmsinh Desai Institute of Technology, at Nadiad on 20/01/2010 as a Assistant Professor and served the university up to 03/07/2011. But after that defendant remained absent from his duties without any prior intimation. So this issue was brought to the notice of proper authorities, and as per direction necessary notice was issued to the defendant but could not be served as the RPAD post returned unserved with endorsement of addressee left the premise. Further, other addresses were also searched but could not be traced out and his mobile number was

also found switched off.

e) Therefore, due to conduct of defendant the plaintiff university and its administration was bound to face difficulties in managing the time schedule for lectures, and due to absence and illegal conduct of the defendant the plaintiff has bared loss which resulted after breach of conditions of bond. The defendant has committed breach of trust and fraud also. Therefore, the defendant is liable to pay compensation as per terms and conditions of bond.

f) The plaintiff has calculated its loss as below-

Rs-12,44,476/-	=	As Salary Paid during study leave.
Rs-40,70,232/-	=	As Salary to be Paid during Six Years.
Rs-1,61,178/-	=	As Salary for 3 month notice period.
Rs-1,58,302/-	=	As interest @ of 12% from 04/07/11 till filing date of present suit.

Total= Rs.56,33,480/-

Thus the plaintiff has prayed for the relief of recovery of damages amount with 12 interest rate as mentioned in para 11 of the plaint.

2] WRITTEN STATEMENT

a) The defendant was duly served with the notice and had appeared through Ld. Advocate and filed his written statements vide Exh. 18, wherein he has inter-alia denied all the allegations made in the plaint. It is stated that the suit is filed after the limitation period. It is further contended that the suit is barred by want of jurisdiction. It is further contended that the say of the plaintiffs that the defendant has executed any bond is false and if there is any bond then that is fabricated and not accepted to defendant. Further the defendant has denied all the facts mentioned in the plaint except facts which are admitted expressly.

b) The Defendant has admitted that he is presently residing at the address as mentioned in the plaint. It has also been admitted that he was appointed as lecturer at Dharmsinh Desai Institute of Information and Technology at Nadiad on 03/07/1995 and then after was promoted and posted as Assistant Professor on 05/07/2004 at department of Computer and Engineering managed by the plaintiff institute. He also admits that he has pursued further studies between 03/07/2006 to 19/01/2010, to get higher Degree i.e. Ph.D. from the IIT Kharagpur. It is also admitted that after completing further higher studies he has rejoined the plaintiff institute on 20/01/2010 as Assistant Professor and has served the institute till 03/07/2011. But the plaintiff institute has not given any care and value to his higher qualification and has not promoted him to the next cadre and has exploited the defendant by not providing any benefit of higher qualification. The defendant has served the plaintiff institute with full loyalty and bond in question is favouring only to plaintiff therefore that is illegal and not binding to defendant. So the defendant has prayed to dismiss the present suit with compensatory cost of Rs.50,000/- only.

3] COUNTER AFFIDAVIT

As against the written statement filed by the defendant the plaintiff has not submitted any counter affidavit.

4] EVIDENCE

In support of this suit, the plaintiff has produced the following oral as well as documentary evidence as under :

// Oral Evidence //

1	Deposition-affidavit of Plaintiff witness - Shri Rajnikant Ishwarlal Jain.(Registrar of University)	Ex.27
2	Deposition of Witness Manojbhai Ranchhodbhai	Ex. 55

	Bhavsar.	
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Documentary Evidence

1	Absence report to the Vice Chancellor	28
2	Notice yadi issued to defendant	29
3	Legal Notice send to defendant	30
4	Complaint given to Nadiad Town Police Station	31
5	Service details of defendant	32
6	Damages Calculation sheet	33
7	Bond Original	34
8	Copy of service book of defendant	51
9	Appointment Letter issued to defendant	52
10	Copy of email sent by defendant to plaintiff	53
11	Copy of letter written by the defendant to V.C. of plaintiff institute.	85
12	Copy of letter written by the defendant to V.C. of plaintiff institute.	86
13	Rejoining Application given by the defendant to V.C. of plaintiff institute	87
14	Statement of defendant's account	91
15	Evidence closing pursis	71

5) In support of this suit, the Defendant side has produced the following oral as well as documentary evidence as under :

// Oral Evidence //

1	Deposition of Defendant J.T.Lalchandani	75
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Documentary Evidence

1	Copy of Oral evidence given in Case Sp.C.S No-56/2014	74
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2	Copy of appointment letter in Dubai	77
3	Copy of Offer letter from National Institute of Design	78
4	Copy of letter for fellowship	79
5	Evidence Closing Pursis	92

6] ISSUES

The following issues are framed at Exh. 19, which are as under :

- 1] શું વાદી સાબીત કરે છે કે, આ કામના પ્રતિવાદી તા.૦૩/૦૭/૧૯૯૫ થી વાદી સંસ્થા દ્વારા સંચાલીત ઇન્સ્ટીટ્યુટમાં લેક્ચરર તરીકે અને તા.૦૫/૦૭/૨૦૦૪ થી આસીસ્ટન્ટ પ્રોફેસર તરીકે ફરજ બજાવતા હતા ?
- 2] શું વાદી સાબીત કરે છે કે, આ કામના પ્રતિવાદીએ પી. એચ ડી. ના વધુ અભ્યાસ માટે ત્રણ વર્ષ દરમિયાન ચાલુ પગારે જવાની પરવાનગી માંગેલી ?
- 3] શું વાદી સાબીત કરે છે કે, પ્રતિવાદીએ એવી બાંહેધરી આપેલ છે કે, પી. એચ ડી. કર્યા બાદ પ્રતિવાદી વાદી યુનિવર્સિટીમાં છ વર્ષ સુધી ફરજ બજાવશે અને તે સમય દરમિયાન પ્રતિવાદી યુનિવર્સિટી છોડી અગર રાજીનામું આપી કોઈ સંસ્થામાં જોડાશે નહીં ?
- 4] શું વાદી સાબીત કરે છે કે, પ્રતિવાદીએ તે મતલબની બાંહેધરી રૂપીયા ૫૦/-ના સ્ટેમ્પ પેપર પર તા. ૩૦/૦૫/૨૦૦૬ ના લેખીત બોન્ડ લખીને આપેલી ?
- 5] શું વાદી સાબીત કરે છે કે, પ્રતિવાદીએ ઉપરોક્ત બોન્ડનો ભંગ કરેલ છે અને તે ભંગ બદલ પ્રતિવાદી વાદી સંસ્થાને દાવામાં જણાવ્યા મુજબની રકમ ચુકવવા જવાબદાર છે ?
- 6] શું વાદીનો દાવો સાંભળવાની આ કોર્ટને હકુમત પ્રાપ્ત થાય છે ?
- 7] શું પ્રતિવાદી સાબીત કરે છે કે, કહેવાતું બોન્ડ ગેરકાયદેસર, એક તરફી અને પાછળથી ઉભું કરેલું અને અમલ ન કરાવી શકાય તેવું છે ?

8] શું વાદી માંગ્યા મુજબની દાદ મેળવવા હકદાર છે ?

9] શું હુકમ અને હુકમનામું ?

7] My findings on the above issues are as under:

- 1 Affirmative
- 2 Affirmative
- 3 Affirmative
- 4 Affirmative
- 5 Partly Affirmative
- 6 Affirmative
- 7 Negative
- 8 Partly Affirmative
- 9 As per final order.

// R E A S O N S //

8) LEGAL POSITION

Before delving into the concerns and proceed with the discussions, the court must first clarify and point out the legal position relating to the facts of the present suit. Therefore before entering in to a discussion on the evidences adduced by both side, first I would like to focus on the legal provisions:

8.1) PRIMARY EVIDENCE AND SECONDARY EVIDENCE

IN Rakesh Mohindra v. Anita Beri, 2015 AIR SCW 6271 Hon'ble SC held that: *As a general rule, documents are proved by leading primary evidence. Section 64 of the Evidence Act provides that documents must be proved by the primary evidence except in cases mention in Section 65 of the Evidence Act. In the absence of primary evidence, documents can be proved by secondary evidence as contemplated under Section 63 of the Act.*

Order 13, Rule 4 CPC provides for every documents admitted in evidence in the suit being endorsed by or on behalf of the Court, which endorsement signed or initialed by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence.

The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as “an exhibit”, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the later case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular.

Indian Evidence Act S.63.Secondary evidence means and

includes —(1)certified copies given under the provisions hereinafter contained (2)copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies (3)copies made from or compared with the original (4)counterparts of documents as against the parties who did not execute them (5)oral accounts of the contents of a document given by some person who has himself seen it.

Indian Evidence Act S.65 Secondary evidence - Cases in which secondary evidence relating to documents may be given of the existence, condition, or contents of a document in the following cases—

(1)When the original is shown or appears to be in the possession or power — of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(2)when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(3)when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(4)when the original is of such a nature as not to be easily movable;

(5)when the original is a public document within the meaning of section 74;

(6)when the original is a document of which a certified copy is

permitted by this Act, or by any other law in force in India to be given in evidence;

(7)when the original consists of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

In Kaliya v State of MP, 2013(10) SCC758 Hon'ble SC Held that: *Section 65(c) of the Act 1872 provides that secondary evidence can be adduced relating to a document when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason, not arising from his own default, or neglect, produce it in reasonable time. The court is obliged to examine the probative value of documents produced in court or their contents and decide the question of admissibility of a document in secondary evidence. However, the secondary evidence of an ordinary document is admissible only and only when the party desirous of admitting it has proved before the court that it was not in his possession or control of it and further, that he has done what could be done to procure the production of it. Thus, the party has to account for the non-production in one of the ways indicated in the section. The party further has to lay down the factual foundation to establish the right to give secondary evidence where the original*

document cannot be produced. When the party gives in evidence a certified copy/secondary evidence without proving the circumstances entitling him to give secondary evidence, the opposite party must raise an objection at the time of admission. In case, an objection is not raised at that point of time, it is precluded from being raised at a belated stage. Further, mere admission of a document in evidence does not amount to its proof. Nor, mere marking of exhibit on a document does not dispense with its proof, which is otherwise required to be done in accordance with law.

However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasised that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party.”

8.2) Indian Evidence Act S.70 Admission of execution by party to attested document. —*The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.*

8.3) ONUS AND BURDEN OF PROOF

It is well established that when a suit is filed, the burden of proof lies upon the plaintiff who has sought relief from the Court and failure to prove its case would dis-entitle him from getting any relief. The onus shifts from stage to stage. The distinction between the “burden of proof” and ‘onus’ has been discussed by the Apex

Court in para 19 of its judgment in **Anil Rishi Case**[**Anil Rishi Vs. Gurbaksh Singh, AIR 2006 SC 1971**].

Indian Evidence Act:101. Burden of Proof: *Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

On whom burden of proof lies.- *The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.* **Burden of Proof as to particular fact.-** *The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on a particular person.*

There is an essential distinction between burden of proof and onus of proof; burden of proof lies upon a person who has to prove the fact which never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence.

Commonly, the Burden of proof is referred to as an obligation to prove one's assertion in a strict sense, the burden of proof is the responsibility to prove a fact in a case. The onus of proof is not defined anywhere in the Evidence Act, however, the provisions relating to the same is provided under the Evidence Act and under many judgments given by the Hon'ble Supreme Court. Hon'ble Supreme Court held that there is an essential distinction between the burden of proof and onus of proof, the first one is the burden to prove the main contention of the party requesting the action of the court, while the second one is the burden to produce actual evidence.

Looking to the above provisions of law and the facts of the case on hand the first burden of proof is on the plaintiff to prove the alleged execution of bond by the defendant. Then the burden and onus will shift on the defendants to prove the execution of said bond was illegal one.

9) ARGUMENTS

9.1)Argument of Plaintiffs

The Ld. Advocate of the Plaintiff has not submitted written arguments but has orally argued before this court and reiterated the facts as mentioned above and in the plaint. Then after in support of plaintiff's claim the Ld. Advocate for the plaintiff, has relied upon the following case laws:.

a] 1991(1) G.L.H. 238, wherein it is held as mentioned in head-note that, *"Evidence Act, 1872 - Section 101 ,102- Burden of proof – it is always open to the defendant not to lead any evidence where onus is upon the plaintiff- However, after having gone into evidence, he can not ask the court to over look it- The question of burden of proof at the end to the case, when both the parties have adduced evidence, is not of any great importance- Court has to come to a decision on the consideration of all materials produced before it."*

b] AIR 2013 S.C. 3311, Sant Longowal Instt. Of Engg. & Tech & others Vs. Suresh Chandra Verma, wherein it is held as mentioned in head-note that, *"Constitution of India – Article-309- Study leave- Grant of with salary and other benefits-is for mutual benefit of institution and employee concerned- Failure of employee to complete study- Govt. entitled to recover entire public money spent on employee-Bond executed in instant case not providing for refund of money by employer-Court in circumstances directed institute not to recover money than what was already recovered."*

- c] **AIR 1972 S.C. 2440, M. Sham Singh Vs. State of Mysore**, wherein it is held as mentioned in head-note that, "*Contract Act 1872 Ss-73 and 62- Student executing bond in favour of state government for prosecuting his studies in U.S.A. at Government expense -Breach of terms of bond- Compensation.*"
- d] **AIR 1990 S.C. 313, Mahabir Kishore Vs. State of M.P.**, wherein it is held as mentioned in head-note that, "*Contract Act 1872 Ss-72 - Unjust enrichment- Ingredients- The principle of unjust enrichment requires first, that the defendant has been "enriched" by the receipt of a benefit. Secondly, that this enrichment is "at the expense of the plaintiff" and thirdly, that the retention of the enrichment be unjust. This justifies restitution. Enrichment may take the form of direct advantage to the recipient's wealth such as by the receipt of money or indirect one for instance where inevitable expense has been saved.*"
- e] **20 (1979) G.L.R. 962, Devidas Manharlal Dadiya Vs. Aher Ghelubhai Rambhai**, wherein it is held as mentioned in head-note that, "*Interest Act 1839 S-1 -" Mere demand of interest amount without mentioning rate-Court entitled to grant interest if conditions in sec.1 satisfied. It is true that the notice merely demands the amount with interest and does not mention the rate at which the interest is to be charged. But that does not mean the court will not be entitled to grant interest if the conditions laid down in sec.1 of the Interest Act are satisfied. These conditions are two viz.(1) Claim for interest on non-payment of the debt;(2) Non-payment in spite of such a claim. There is no provision that the claim interest has to be made at a specified rate of interest.*"
- f] **AIR 2000 S.C. 2003, Ghaziabad Development Authority Vs. U.O.I.**, wherein it is held as mentioned in head-note that, "*Contract Act 1872*

Ss-62 -Breach of Contract- Payment of interest not provided in the contract- Interest can yet be awarded on equitable grounds.-Award of 12% interest per annum was held justified.”

- g]** **AIR 1982 Gauhati 100**, wherein it is held as mentioned in head-note that, "*Evidence Act 1872 Ss-68 -Document executed for taking loan- Attesting witness could not be found- S.68 not attracted- case is covered by S.69.*"
- h]** **AIR 1998 Rajasthan 25, Amri devi Vs. Ridmal**, wherein Limitation for filing a suit in case of recovery of consideration amount is held valid upto 3 years from the date of refusal.”

9.2) Arguments of Defendant

The Ld. Advocate of Defendant has not filed his written arguments but has argued orally before this court, wherein he has stated that the plaintiff has not produced and proved any evidence which may show that plaintiff has given appointment to the defendant and defendant was given permission to do further studies. The plaintiff has not examined accountant to prove the damages and calculation of amount of damages caused to plaintiff. Further there is no agreement between the parties in respect of interest therefore the plaintiff has wrongly and illegally imposed and calculated the interest. Further plaintiff has not proved the terms and conditions of bond therefore, there is no question of breach of terms of bond. Further plaintiff in its notice given to defendant has mentioned that the bond was executed in presence of the plaintiff's authorised person whereas, this fact is not mentioned in the plaint. So original bond how came into the possession of the plaintiff is the big question of fact. Further, the bond is not executed in the presence of witness and the plaintiff has not examined the then Registrar and Dean working in the university so the execution of bond is in

question. If the permission was granted to defendant then that must be shown in the service book of the defendant but there is no one entry regarding giving permission to do further studies, conditions of bond and completion of further studies with Ph.D. Degree. Further, the plaintiff has harassed the defendant and has not given promotion to defendant in time and now has filed a recovery suit based on a fake document. Therefore the present suit is liable to be dismissed with heavy cost.

10) GIST OF ORAL EVIDENCE :-

a) In the present case on hand witness of **Plaintiff - Shri Rajnikant Ishwarlal Jain.(Registrar of University)** filed his deposition vide **Exh. 27**, wherein fact as stated in plaint has been reiterated, then after during Cross-examination, he has stated that University has granted permission for 3 years to defendant to do further studies. **Then after the witness has accepted the question of defendant that-** defendant was also permitted to study in M.Tech. Between 2001 to 2003. when the defendant went for M.Tech, a bond was taken from him. The defendant when returned back after completing the M.Tech has followed the terms of bond. The entry for permission to pursue the M.Tech and getting warded with M.Tech Degree is also not mentioned in the service book of defendant.

b) Then after witness of **Plaintiff - Manojbhai Ranchhodbhai Bhavsar.** filed his deposition vide **Exh. 55**, wherein fact as stated in plaint has been reiterated, then after during Cross-examination, he has stated that University has granted permission for 3 years to defendant to do further studies. **Then after the witness has accepted the question of defendant that-** defendant was also permitted to study in M.Tech. Between 2001 to 2003. when the defendant went for M.Tech, a bond was taken from him. The defendant when returned back after

completing the M.Tech has followed the terms of bond. The entry for permission to pursue the M.Tech and getting warded with M.Tech Degree is also not mentioned in the service book of defendant.

c) The deposition of **Shri J.T.Lalwani - Defendant No. 3** is produced at **Exh. 75**, wherein fact as stated in written statements has been reiterated, then after during Cross-examination, he has stated that I have not submitted any written objection against the bond before plaintiff institute. **Then after the defendant witness has accepted the question of plaintiff that-** he has read the bond vide Exh-34 and there is his signature over it. As per Exh-34 he has to serve the plaintiff institute upto 6 years after getting Ph.D. Degree. As per bond condition if plaintiff institute bear any loss then it was his duty to compensate it. When he went to do study in Ph.D. his salary was directly getting deposited or credited with his account. His bank account is maintained at B.O.B. college road branch. Some part of cross examination of the defendant is as below-

"હું પી.એચ ડી. કરવા સને ૨૦૦૬ ની સાલ માં ગયેલો અને આ પી.એચ ડી. નો સમયગાળો સાડા ત્રણ વર્ષ નો હતો. એ વાત ખરી છે કે, મે ત્રણ વર્ષમાં પી.એચ ડી. કમ્પ્લીટ કરેલ નથી પરંતુ સાડા ત્રણ વર્ષમાં પુરુ કરેલ. એ વાત ખરી છે કે, પી.એચ ડી. કરવા ગયેલ ત્યારે પરવાનગી લીધેલી. એ વાત ખરી છે કે, હું પી.એચ ડી. કરવા ગયો ત્યારે મારો પગાર ચાલુ હતો. એ વાત ખરી છે કે, મારો પગાર વાદી સંસ્થા આપતી હતી. મારો પગાર સીધો બેંક ખાતામાં જમા થતો હતો. હું પી.એચ ડી. કરવા ગયો ત્યારે બોન્ડ લખી આપેલો. સાહેદ જણાવે છે કે જબરજસ્તી થી મારી પાસેથી લખાવી લીધેલો. મને આંક ૩૪ વાળો બોન્ડ બતાવવામાં આવે છે તે જોઈ ને કહું છું કે આ તે જ બોન્ડ છે અને તેમાં મારી સહી છે. આ બોન્ડ લખાવવા કોણે જબરજસ્તી કરી તેમના નામ મને યાદ નથી કે હોદ્દો યાદ નથી. હવે સાહેદ જણાવે છે કે , કોઈક મી.ભેંડા કરીને કોઈક વ્યક્તિ હતા. મારા જવાબ વખતે મી.ભેંડાનું નામ યાદ ન હતું. એ વાત ખરી છે કે મે જે પી.એચ ડી. કરવા અંગેનો ખર્ચ કરેલો તે સંસ્થાએ ચુકવી આપેલા પગારમાંથી કરેલો. આંક ૩૪ વાળો બોન્ડ હું

પી.એચ ડી. કરવા ખડગપુર ગયો ત્યારે કરેલો. સાહેદ જણાવે છે કે, પી.એચ ડી. નું એડમીશન થયા બાદ કરેલો. એ વાત ખરી છે કે, જોઈનીંગ લેટર લખેલો જે આંક ૮૭ થી રજુ છે તેમાં સાહેદ પોતાની સહી કરેલાનું ઓળખી બતાવેલ છે. મને આંક પર વાળો એપોઈન્ટમેન્ટ લેટર બતાવવામાં આવે છે જે જોઈને જણાવું છું કે તે લેટર મને મળેલો. એ વાત ખરી છે કે, આંક પર વાળા લેટર મુજબ નોકરી છોડતા પહેલા ત્રણ મહિના ની નોટીસ સંસ્થાને આપવી પડે. મે સંસ્થાને નોકરી છોડતા પહેલા ત્રણ માસની નોટીસ આપેલી નહી. એ વાત ખરી છે કે, મે સંસ્થાને ત્રણ માસની નોટીસ આપેલી ન હોવાથી ત્રણ માસનો પગાર આપવાની જવાબદારી મારી ઉપર આવે છે. એ વાત ખરી છે કે, સંસ્થાએ મને પી.એચ ડી. કરવા એટલે મોકલ્યો હતો કે મારા ગ્યાનનો, કૌશલ્યનો, અનુભવનો તથા ડીગ્રીનો લાભ યુનિવર્સિટી ના વિદ્યાર્થીઓને મળે તે હતો. એ વાત ખરી છે કે, બઢતી માટે શૈક્ષણિક લાયકાત ઉપરાંત ઘણા બધા તત્વો ધ્યાન ઉપર લેવામાં આવે છે. હું પી.એચ ડી. કરી આવ્યા બાદ વાદી યુની. માં જોઈન્ટ થયો ત્યારથી હું વાદી યુની. છોડીને ગયો ત્યાં સુધી મારો પગાર નિયમિત મારા ખાતામાં જમા થતો હતો. એ વાત ખરી છે કે, તે ટ્રાન્સફર અથવા સેલેરી હેડની એન્ટ્રીથી જમા થતો હતો.”

11) DISCUSSION OF FACTS AND EVIDENCE PRODUCED ON RECORD
IN LIGHT OF LEGAL PROVISIONS AND SETTLED PRINCIPLES FOR
ISSUE NO 1 to 7 :

For the sake of convenience, as these issues involves common question of law and facts, hence these issues are discussed together:

a) Now first of all if we look at the oral evidence it appears that during cross examination the defendant has accepted that he had first time joined the plaintiff's institute on 03/07/1995 and then after was also promoted and appointed as Assistant professor on 05/07/2004 by the plaintiff's institute. The same facts are also appearing from the service book of the defendant which was maintained by the plaintiff during the course of business and the same has not been disputed by the defendant. Therefore there is no other proof is required to presume that the plaintiff has successfully proved the fact that the defendant had joined the plaintiff

institute on-03/07/1995. Hence, **Issue No. 1 is answered in affirmative.**

b) Similarly, if we look at the oral evidence it appears that during cross examination the defendant has accepted that he went for further studies of Ph.D. after obtaining the permission from the plaintiff university and has also admitted that he has read the bond vide Exh-34 and there is his signature over it. As per Exh-34 he has to serve the plaintiff institute upto 6 years after getting Ph.D. Degree. As per bond condition if plaintiff institute bear any loss then it was his duty to compensate it. When he went to do study in Ph.D. his salary was directly getting deposited or credited with his account. His bank account is maintained at B.O.B. college road branch. Therefore there is no scope for the contention of defendant regarding non-production of permission sanction letter. **Then after the only contention exist about willful execution of bond and legality of said bond.** On this point if we re look at the evidence produced by the plaintiff, then it appears that the plaintiff has produced the original bond vide Exh-34, which was bought by the Jaiprakash T. Lalchandani i.e. defendant himself on 30/05/2006 from the stamp vendor of Nadiad with serial no-1084. Then after this bond was not submitted at the office of the plaintiff on that date or nearby date but has been submitted on 25/07/2006 after getting email from the plaintiff institute as appearing from the letter written by the defendant vide Exh-86. Since this fact and letter has not been disputed by the defendant and sign over bond is also admitted by the defendant. Then after, the sign over the bond vide Exh-34 and letter Vide Exh-86 are appearing of the same person then in that situation in the absence of any objection or complaint before the proper authority against the execution of bond and submission of bond with the plaintiff institute, even till leaving the institute without prior intimation, it can not be said that said bond was taken by the plaintiff by an illegal way or means. Further if there was any kind of illegal means which was

adopted by the plaintiff then that could have been mentioned by the defendant in his letter dated 25/07/2006 as produced vide Exh-86. But that has not been mentioned in the letter vide Exh-86.

c) Further as per letter vide Exh-86 the bond was admittedly submitted with the plaintiff institute after first failed attempt made by the defendant. When the said letter has not been questioned and signature over the document has been admitted then it can not be presumed that the bond vide Exh-34 was later on created illegally. At this stage the contention of the defendant regarding timing for possession of bond as shown in the plaint is concerned, in this regard if we look at the facts and circumstances then it appears that admittedly, the defendant went to further studies which was subject to permission followed by the execution of bond and on record there is no question about grant of permission. The defendant went to further studies after obtaining the permission from plaintiff institute. Therefore the fact regarding grant of permission and submission of bond is important, not the date of possession of document.

Further admittedly the reasons for delayed delivery or submission has been well explained by the defendant himself in his letter vide Exh-86. Since the date of execution of bond has not been questioned by the defendant in that situation the contention raised by the defendant can not be accepted as reasonable and justifiable.

d) Further, if we look at other contention about legality and enforceability of bond then it appears that the sign and execution of the bond on the date as mentioned on it, has not been denied and even the defendant was not competent to sign the said bond on the date of execution of it, has also not been proved by the defendant.

e) Further as per provisions of section 2(c) of Gujarat stamps Act 1958 and section 2(d) of Limitation Act 1963 bond includes any instrument whereby a person obliges himself to pay money to another on condition

that the obligation shall be void if a specified act is performed or is not performed as the case may be; after considering these definitions as per argument of plaintiff, it appears that the bond is an instrument by which any person obliges or binds himself to pay money to another on condition that if a specified act is performed or not performed.

f) Similarly at this point it is also important to see that what are the documents required by law are to be attested. Whether a document requires by the law to be attested or not is an important point for consideration when the document is tendered in evidence and that it is a potent factor for consideration under the civil law. In certain cases, attestation it is legally made as mandatory. In fact, Section 67 of the Indian Evidence Act, 1872 says about the proof of documents which are not required by law to be attested. However, it is in section 68 of the Indian Evidence Act, where it is said about the proof of execution of documents required by law to be attested.

Attestation :— The word attestation is to be understood in the context of Section 63(c) of the Indian Succession Act. It must be remembered that after the ruling of *Shamu Pattar v. Abdul Qadir* – 35 Mad 607 (Privy Council) , the Transfer of Property (Amendment) Act 27 of 1926 inserted the definition of “attested” in Sec. 3 of the Transfer of Property Act in terms of the definition of the Indian Succession Act. As was pointed out in *Ramaswamy Iyengar v. Kuppuswamy Iyer* – (1921) 14 L.W. 99 , a deed which creates a charge does not require to be attested and proved in the same way as a mortgage. The rule is under Section 54 of the Transfer of Property Act, a sale deed relating to tangible immovable property of value of Ra.100/- and upwards or of a reversion or of other intangible thing can be done only by a registered deed and it does not require attestation.

Further, as seen from the language of section 68 of the Indian

Evidence Act, 1872, a bond is also not an instrument required by law to be attested but for the purpose of Stamp Act it may be necessary for a bond to be attested if the executor of bond binds himself and that instrument is not having name of the bearer or payable to order over the face of it. In the present case the bond is specifically mentioning the bearer or order to pay as Dharmsinh Desai University Nadiad. Therefore, here attestation is not required as per the provisions of stamps Act also.

Further, as per **S.70 of Indian Evidence Act** when, the admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested. Then in that situation in present case also if defendant is claiming that the bond executed vide Exh-34 must be attested by the witness, this contention can not be accepted for the reasons that the defendant has taken benefit of this document and has never disputed this earlier to it and has also admitted the sign over it made by himself. Therefore, in this situation as per section 70 of the Evidence Act the document is admissible without being attested by any witness.

g) After it, since the document vide Exh-34 is admittedly the bond, then that is required to be signed only by the person who is executing such document and none. Further the defendant has already taken the benefit of fruits of such bond. Therefore, at this stage when there is question of breach of terms and its consequential implementation then at that point of time, it can not be said that there may arise any question about one-side execution after consuming the fruit of the document.

h) Further, during cross examination the defendant has accepted that as per the bond condition he is bound to pay the damages caused to plaintiff. It has also been admitted that he has not given any notice to plaintiff before leaving the institute therefore also bound to pay the amount for three months notice period. Further the defendant has also admitted that there was condition that he will serve institute for six year after obtaining the Ph.D. Degree and will not leave the institute or join

the other institute. This condition is also mentioned in the bond Vide Exh-34, executed by the defendant in favour of plaintiff institute.

i) Further, since the suit amount is more than the amount which may come under the pecuniary jurisdiction of other court and plaintiff institute is also situated within the jurisdiction of this court, then in that situation this court is having jurisdiction over the suit to try it. Further nothing any other adverse evidence has been brought on record, which may skip the jurisdiction of this court.

j) Further, if we consider the bond Vide Exh-34, there is no provision for imposing the interest over the damages amount arisen due to breach of terms of bond. So there is no justification on record for imposing interest over the damages amount for the period before filing of the present suit. Therefore, the arguments of defendant is liable to be accepted on this point only.

k) Further, if we look at the contention of defendant regarding non-mentioning of permission for further studies and bond executed for it and award of Ph.D. Degree to defendant in the service book of defendant. On this point after considering the record, it appears that the contention raised by the defendant is true but the same can not be accepted in his favour because other evidence regarding actions between the parties are available on record. Further, the omission to make entry in service book was intentional with dishonest intention has not been proved by the defendant. Further it has also not been proved by the defendant that he had applied in writing to the plaintiff institute for making the relevant entries in his service book. Therefore, the contention raised by the defendant are baseless and without any proof, so can not be accepted at this stage.

l) Therefore, after considering the above facts and reason it appears that the rest of the arguments advanced by the defendant is not having

any weight and can not be considered as per provisions of law in the present context. So the when the defendant had executed a legal bond in favour of plaintiff for the purpose of further studies and that contains the conditions to compensate the plaintiff if any condition is breached by the defendant and during the study leave defendant has also received the payment from the plaintiff. That bond is legal and enforceable by the law as per section- 124,65,72 and 73 of Indian Contract Act. So now for the breach of terms, the defendant is liable to pay the damages as per terms and conditions and plaintiff is entitled to get recover the the damages amount from the defendant but the amount as claimed in plaint has also included the amount of interest for the period which is before filing the present suit and also has included the amount of salary for the period for which defendant has served the plaintiff institute after being awarded with Ph.D. Degree i.e. 20/01/2010 to 03/07/2011. So the plaintiff is entitled to recover only the amount after excluding the amount of interest for the period which is before filing the present suit and amount of salary for the period for which defendant has served the plaintiff institute after being awarded with Ph.D. Degree. Hence, **Issue No. 2 to 4 and 6 are answered in affirmative, whereas Issue No. 5 is answered in partly affirmative and Issue no- 7 is answered in negative.**

m) Similarly, when the present suit is filed within three years from the date or time of happening of specified contingency i.e. breach of terms. Therefore, as per article 27 and 30 of the schedule of Limitation Act this suit is filed with in time as on 21/12/2013 from the date of breach of terms admittedly 04/07/2011. So the present suit is filed with time limit as prescribed under the Law.

n) Further, at this stage when the plaintiff has asked interest at the rate of 12 % till the realization of the amount. So in this context section 34 of C.P.C. become important which is as below-

Section 34:- Interest.- (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum, as the court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit:

Provided that where the liability in relation to the sum so adjudged had **arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest** or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation I: In this sub-section, “nationalized bank” means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II: For the purposes of this section, a transaction is a commercial transaction, if it is connected with the, industry, trade or business of the party incurring the liability.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate suit there for shall not lie.

[Emphasis Supplied]

After considering the above provision it appears that if there is any written agreement regarding interest then that will be paid but if there is no written agreement then the interest rate applicable by the national banks will be paid and if national banks interest rate are not proved on record then the claimed shall be paid only with 6 % interest rate. In the present case the interest rate is not mentioned in the bond or no any written agreement regarding it has been proved and no national bank interest rate has been proved by the plaintiff, So at present the plaintiff is entitled to only interest at the rate of 6% from the date of filling of present suit. Hence, I answer this **Issue No. 8 in partly affirmative; and** consequently in the interest of justice, for the issue no 09, I pass the following final order :-

// O R D E R //

1] The plaintiffs suit is hereby **Partly allowed.**

2] The defendant is directed to pay the plaintiff for damages of such remaining amount which is payable after deducting the salary amount for the period which defendant has served the plaintiff institute after obtaining the Ph.D. Degree.i.e. 20/01/2010 to 03/07/2011 and interest calculated for the period before filing the present suit, from the suit amount of Rs.56,33480/- with simple interest at the rate of 6 % per annum from the date of filing of the present suit and till the realization of decreed amount.

3] Parties do bear their own costs.

4] Decree be drawn accordingly.

Signed and pronounced in the open court today.

Date-27/12/2023

Place: Nadiad

[Tej Pratap Singh]
7th Addl. Sr.C.J.,Nadiad
GJ01247