

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

Judgment reserved on: 31.08.2022

% **Judgment delivered on: 08.09.2022**

+ LPA 285/2021

PARAS KHUTTAN Appellant

Through: Mr. Anuj Aggarwal, Advocate.

versus

GAIL INDIA LTD & ANR. Respondents

Through: Ms. Purnima Maheshwari, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Appeal has been filed under Clause X of the Letters Patent, against the impugned judgement/ order dated 10.02.2021 passed by the Learned Single Judge in W.P.(C) No. 4617/2020 titled "*Paras Khuttan Vs. Gail India Ltd & Anr.*".

2. The facts of the case reveal that the Appellant before this Court applied in pursuant to the advertisement issued by Gas Authority of India

Limited (hereinafter referred to as GAIL), and was finally offered an appointment vide letter dated 30.07.2019 to the post of Manager (Law).

3. The Appellant joined as Manager Law on 13.12.2019. While he was on probation, he resigned from the post of Manager (Law). He submitted his resignation on 15.01.2020 from the post of Manager Law requesting the employer to relieve him on or before 22.01.2020. The Respondent employer sent an E-mail on 23.01.2020 and the Appellant was directed to serve three months' notice or three months' pay in lieu of such notice.

4. The Appellant with quite promptitude submitted a reply to the E-mail on 27.01.2020 stating that he is a probationer, and in respect of a probationer, the issue of giving three months' prior notice or pay in lieu of three months' notice does not arise, and he again made a request for relieving him on 17.02.2020.

5. The Appellant on 03.02.2020 again requested the Authorities to relieve him and to re-consider the requirement of serving three months' notice as he was a probationer. However, the employer vide letter dated 05.02.2020 informed the Appellant that the resignation of the Appellant had been accepted with effect from 17.02.2020. However, his request for waiving the notice period was turned down.

6. The Appellant vide E-mail dated 06.02.2020 was directed to deposit a sum of Rs. 1,74,253/- i.e. three months pay in lieu of the notice period.

7. The Appellant left with no other choice as he wanted to leave the Organization, deposited Rs. 1,74,253/- on 07.02.2020 and the same was informed to the Authorities. He was relieved on 07.02.2020.

8. The Appellant has further stated that on 23.03.2020, a nationwide lockdown was declared by the Government of India, and, therefore, on

account of lockdown he was not able to protest in time. However, he submitted a representation to the Chairman & Managing Director of GAIL on 27.05.2020 to refund the sum of Rs. 1,74,253/-.

9. The DGM (HR-ES) rejected the representation/ appeal of the Appellant vide order dated 03.07.2020 and in those circumstances a Writ Petition was preferred before this Court i.e. W.P.(C) No. 4617/20200 titled ***Paras Khuttan Vs. Gail India Ltd & Anr.*** The Learned Single Judge has dismissed the Writ Petition.

10. The contention of the Appellant before this Court is that he was working as a probationer, and in absence of rules/ laws in respect of probationer to give three months notice or to pay salary in lieu of notice, the forced recovery of Rs. 1,74,253/- is bad in law and he is entitled for refund.

11. Learned Counsel for the Appellant has vehemently placed reliance upon the judgment delivered in the case of ***Medha Moitra V Union of India & Ors***, MANU/WB/2399/2019, and his contention is that in a similar circumstances, the Calcutta High Court has allowed the Writ Petition. The reliance has also been placed upon the judgement delivered by Punjab and Haryana High Court in the case of ***Nitin Gupta Vs. Post Graduate Institute of Medical Education and Research***, 2007 (2) SCC 434. Learned Counsel for the Appellant has vehemently argued before this Court that he has submitted an Appeal to the Chairman & Managing Director for refund of the amount which was paid by him under coercion in lieu of three month notice. However, his appeal/ representation was rejected by an authority not competent to do so, contrary to the statutory provisions as contained under the GAIL (General Terms and Conditions of Services) Rules.

12. Learned Counsel for the Appellant has also argued before this Court that the order dated 03.07.2020 passed by the General Manager rejecting the representation is violative of principles of natural justice and fair-play as no opportunity of hearing was granted to the Petitioner, and, therefore, the order is bad in law.

13. The Appellant has also taken a ground stating that the Learned Single Judge has erroneously kept the probationary and regular employees in one class, and by erroneous interpretation of the Rules governing the field, the Learned Single Judge has arrived at a conclusion that the Appellant was liable to pay three months' salary in lieu of three months' notice, and, therefore, the order passed by Learned Single Judge deserves to be set aside.

14. It has been vehemently argued that the Clause relating to payment of three months' salary is applicable only to "employees" and not to "probationers", and, therefore the order passed by the Learned Single Judge deserves to be set aside, and Appellant is entitled for refund of the amount deposited under protest.

15. On the other hand, Learned Counsel for the Respondent has vehemently argued before this Court that the Petitioner was serving as an employee of GAIL, and the statutory provision governing the field categorically provides that an employee on resignation has to give three months' notice or pay three months' pay in lieu of the notice. Therefore, since the Petitioner was serving as an employee, the aforesaid mandatory condition could not have been waived, and, therefore, the Appellant was rightly directed to pay the salary as per the Rules governing the field. Hence the Learned Single Judge is justified in dismissing the Writ Petition.

16. Learned Counsel appearing for the Respondent Employer has also argued before this Court that the Rules governing the field do not place the probationers in a different category, and the meaning and definition of employee includes the probationers also in the matter of resignation.

17. He has stated that even a probationer who is working on probation has to serve three months' notice/ three months' salary as the Rules Governing the field clearly mandate for serving three months' notice or payment in lieu thereof. The Learned Single Judge is justified in dismissing the Writ Petition and the appeal also deserves to be dismissed.

18. Learned Counsel for the Respondent has read out the statutory provision of governing the field, and his contention is that by no stretch of imagination, the requirement of three months' notice period or payment in lieu thereof can be waived off even though the employee was serving on probation.

19. Learned Counsel for the Respondent has also argued before this Court that the Appellant/ Petitioner has estopped from making a claim of refund as he has deposited the amount with open eyes and after he was relieved on deposition of such an amount. At this juncture, reliance has been placed upon a judgment delivered in the case of ***B.L. Sreedhar vs. K.-M. Munireddy***, (2003) 2 SCC 355. Learned Counsel for the Respondent has prayed for dismissal of the Appeal.

20. Heard the Learned Counsel for the Parties at length, and perused the record. The matter is being disposed off at admission stage itself with the consent of the parties.

21. The undisputed facts of the case reveal that in October, 2018, the Respondent GAIL which is a Public Sector Undertaking, invited the

applications under the special recruitment drive for SC/ST/ OBC (Non Creamy Layer) and PWDs Candidates in Executive Cadre, and the Appellant was shortlisted for interview vide call letter dated 25.03.2019.

22. The appointment order was issued on 30.07.2019 appointing the Appellant on the basis of Manager Law in E-3 Grade carrying a Pay-Scale of Rs. 70,000 – 2,00,000. The appointment letter which is on record makes it very clear that the Appellant was appointed on probation for initial period of one year and after successful completion of the same, he was entitled to be confirmed.

23. The relevant terms and conditions in respect of the post of Manager (Law) in E-3 Grade which are part of the appointment order (Annexure A2) are reproduced as under:

“ANNEXURE-II

*GAIL (India) Limited
New Delhi*

Terms and conditions of appointment of SHRI PARAS KHUTTAN to the post of MANAGER (LAW) in E-3 Grade

l.(a) The appointment carries with it the liability to serve in any part of India or abroad. During your service in GAIL (India) Limited, you are liable to be seconded, deputed or transferred to any other Company, including a Government Department, Joint venture or Subsidiary Company of GAIL (India) Limited, PSUs, etc., and you will be bound by such transfer order. In case of your deputation, transfer or secondment, you will be guided and regulated by the terms and conditions of such transfer, deputation or secondment as amended from time to time.

- 1.(b) *During your service in the company, you shall be liable to be transferred to any office, project or any other place or location or job with suitable designation where you may be posted for any of the Company's work in any part of India or abroad as may be required by the Competent Authority.*
- 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.*
- 2.(b) *After satisfactory completion of probation, the services will be liable to termination by giving three months' notice on , either side without assigning any reasons thereof; provided also that Appointing Authority shall have right to terminate the services of the appointee forthwith or from any subsequent date on payment of a sum equivalent to the amount of pay and dearness allowance last drawn by the appointee for the period of notice in lieu of the notice period or period by which such notice falls short of.*
- 2.(c) *Confirmation of appointee on initial appointment in the company shall be subject to satisfactory verification of character & antecedents in the prescribed form by the prescribed authorities in accordance with the directives issued from time to time. In case of employees joining from Government/ Public Sector Undertakings/ State Governments, such verification is not required provided*

their character & antecedents verification was done earlier by the previous employers and intimation given to the company to this effect.

2.(d) Confirmation of appointee on initial appointment in the Company shall also be subject to satisfactory verification of caste certificate [In case appointee belongs to SC/ ST/ OBC (NCL) category] in the prescribed form by the competent Authority in accordance with the guidelines issued from time to time. ”

24. The aforesaid terms and conditions of the appointment order makes it very clear that Appellant was appointed on probation for one year and competent authority was given a discretion to extend the period of probation. It was also categorically mentioned that during the period of probation, or during the extended period of probation, the services were liable to be terminated at any point of time without notice or without assigning any reason therefor.

25. Not only this, the appointment order also makes it very clear that after completion of probationary period successfully, the probationer shall be treated as a regular employee of the Company.

26. The Rules governing the field relating to terms and conditions of service in respect of GAIL Employees are known as GAIL (General Terms and Conditions of service Rules), and Rule 2, Rule 3, Rule 4, Rule 7 and Rule 8 are reproduced as under:

“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 & Managing Director of the Company.*

2.2 Masculine gender also refers to feminine gender.

3. DEFINITIONS

In these Rules, unless there is anything repugnant to the subject or context:

- a) *'Appointing Authority' in relation to an employee means the authority empowered by the Management to make appointment to the category or grade or post in which the employee for the time being is included or to the post which the employee for the time being holds.*
- b) *'Board' means the Board of Directors of the Company.*
- c) *'The Company' means GAIL (India) Limited*
- d) *'Management' means the Chairman and Managing Director or Director (HR) or any other Executive of the Company so authorised.*
- e) *'Competent Authority' with reference to the exercise of any powers under the Rules mean the Executives or authority to whom such powers are*

delegated by the Management, either in general or in particular.

- f) *'Employee' means a person engaged by the Company to do any work except those excluded under para 2 above.*
- g) *'Regular employee' means an employee appointed to a post in a regular pay scale and on the regular rolls of the Company, engaged to do any work and who has satisfactorily completed his probationary period of service.*
- h) *'Temporary/ Ad-hoc Employee' means an employee who has been engaged on a temporary basis or against a temporary post for a specific period or for work which is essentially temporary in nature, and likely to be completed within a specific period.*
 - i) *'Casual employee' means an employee whose employment is of occasional or casual nature.*
- i) *'Daily Rated Employee' means a casual employee appointed on daily wage rates.*
- k) *'Part-time employee' means an employee who is not appointed to work on full-time basis in a regular time scale.*
- l) *'Contract Employee' means an employee whose employment is on contract basis for a specific period.*
- m) *'Probationer' means an employee who is temporarily employed in a regular pay scale of the Company and placed on probation.*
- n) *'Apprentice/Trainee' means a learner who is given a stipend/Pay or a grade as may be decided by the Management during the period of his training. This definition does not include the Apprentices taken under the Apprentices Act, 1961.*

NOTE

The terms and conditions of employment and the period-of training will be governed by the contract of Apprenticeship employment and Service bond and will be subject to the rules or orders framed by the Management from time to time.

- o) 'Employee on deputation/ Foreign Service' means an employee of some other organisation deputed for service in the Company at its request or vice-versa.*
- p) 'Executive' means an employee holding a post in the executive cadre of the Company.*
- q) 'Notice' means any communication given in writing or affixed on the Notice Board. In case of Notice relating to an employee, it would be taken as sufficient if delivered personally to the employee or any member of his family or affixed on the door of his residence or sent by registered post on his last known residential address or permanent home address.*
- r) 'Staff' means an employee who is not an Executive.*

4. CLASSIFICATION OF EMPLOYEES

The employees shall generally be classified as under:-

- i) Regular*
- ii) Temporary*
- iii) Casual/Daily-rated/Part-time*
- iv) Probationer*
- v) Apprentice/Trainee under GAIL Schemes.*
- vi) On Deputation/Foreign Service.*

These employees would be further categorised as Executives and Non-executives.

7. PROBATION & CONFIRMATION

- 7.1 *Unless otherwise provided in the terms of appointment or any other agreement or award, the following rules will govern the probation and confirmation of employees.*
- 7.2 *All employees on first appointment in the service of the Company including employees appointed to higher grades consequent upon promotion or on the basis of open selection shall be placed on probation for a period of one year during which period their performance will be watched with a view to determining their suitability for confirmation against the regular posts. However, the employees of the Government and other Public Sector undertakings initially taken on deputation and subsequently absorbed in the Company service in the deputation post are exempted from the above rules.*
- 7.3 *The period of probation may be extended at the discretion of the competent authority but will not be extended by more than one year save for exceptional reasons to be recorded in writing.*
- 7.4 *Unless exempted under these Rules, every employee appointed in the Company service will be issued a formal order of confirmation on satisfactory completion of probation period or the extended period of probation, as the case may be. The employee will be considered to be continuing on probation until so confirmed in writing.*
- 7.5 *An order relating to confirmation or extension of probation will normally be indicated within one*

month from the date of completion of the probationary period or extend period of probation. Non compliance of this stipulation will not, however, result in automatic confirmation of the employee.

- 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.*

Clarification

Heads of P&A Deptts. Of all Regional/Field Offices have been advised to ensure timely advance action to process the probation clearance cases so that possible procedural delays can be avoided. In case any difficulty in encountered in any probation clearance case, the same may be brought to the notice of Corporate Personnel Department.

*(No. CO/Pers./Poi/P-63
dated 29.10.92}*

With a view not to prolong the completion of probation of employees on promotion in respect of whom preliminary enquiries have been initiated or

against whom disciplinary proceedings are contemplated or have been initiated the issue was examined in light of Industry practice, CVC guidelines & GAIL Rules and the following has been decided:

a) Vigilance clearance will be necessary before the Appointing authority decides to complete the probation of an employee on promotion.

b) Vigilance clearance will not be withheld if an employee on probation on promotion has been proceeded against under CDA Rules/Standing orders for alleged misconduct and/or acts of omission & commission related to the period prior to promotion.

c) Vigilance clearance will be withheld if an employee on probation on promotion has been proceeded against under CDA Rules/Standing Orders for alleged serious misconduct and/or acts of omission & commission related to the period during probation on promotion.

d) Vigilance clearance will also be withheld after sanction for prosecution has been accorded by the Competent Authority for alleged misconduct and/or acts of omission & commission whether related to period or prior to promotion of the employee or to that during the period of his probation on promotion.

[CO/HR/Pollf-23, dated 16.3.2012)

REGULATION OF PERIOD OF ABSENCE OF EXECUTIVE TRAINEES.

With a view to streamline case of Executive Trainees who successfully complete their initial Training period but continue to be on probation pending verification of C&A/Caste Certificate, it has been decided as under:

- *On successful completion of his/her initial training period, Executive Trainee shall be designated as Sr. Engineer/Sr. Officer. However, pending receipt of verification of Character & Antecedents and Caste Certificate they shall continue to be on probation.*
- *They will be eligible for all benefits as applicable to executives under probation on initial appointment in the grade.*

A draft Office Order designating Executive Trainee as Sr. Engineer/Sr. Officer is placed at Annexure-I.

Annexure-I.

OFFICE ORDER

_____ .ID No., _____ .EXECUTIVE TRAINEE () on successful completion of initial Training period is designated as SR ENGINEER/ SR OFFICER w.e.f. ___ in GAIL (India) Limited in the scale of pay Rs. 24900-50500/-

He / She will continue to be on probation in the above pay scale and his/ her confirmation in the grade will be subject to receipt of satisfactory report on verification of C&A and or Caste Certificate. He/ She will be eligible for other allowances as per rules of the Company as may be applicable to other regular employees of GAIL in the E-2 grade only after completion of probation.

During this probation period, Shri / Ms. _____ is further subject to terms & conditions of his/ her appointment, Service Bond Agreement executed by him/her on intial appointment, and service rules/ conditions, as are applicable to regular employees from to time.

[No. CO/HR/PoL/P-27 dated 04.08.2014]

8. DISCHARGE AND TERMINATION OF SERVICE

- 8.1 Except, as may be specifically provided in the contract of service, the Management may at any time discharge an employee from service by giving*

notice for the period mentioned herein or by payment of wages in lieu of such notice. Similarly, the employee will be required to give the same notice in the event of his intention to leave the service of the Company. Notwithstanding the above provision, an employee who tenders resignation will be relieved from his duty only on his resignation being accepted.

8.1.1 There have been instances in the past where some of the employees have tendered their resignations while on leave and have forwarded the same through e-mail to the concerned OIC/HOD/HR-Incharge. In such cases, due to absence of employee(s), settlement of dues gets delayed which sometimes leads to disputes w.r.t. penal interest recoveries on Loans/Advances etc. To avoid such situations, the concerned employee(s) who has tendered his/her resignation while on leave, should be directed to joined at the concerned work centre/office to facilitate the final settlement of dues and be subsequently relieved from the services of the Company with the Relieving Order duly issued by concerned HR Department.

However, if due to some pressing circumstances, the employee (s) is not able to join back after leave, submission of a hard copy of the resignation letter along with the address for further communication and contact numbers, be insisted upon from him/her. In no case, resignation submitted through e-mail/scanned letter through e-mail be entertained.

The above may strictly be adhered to in all resignation cases in future.

(No.22/02/53fRESGN/2010, dated 8.7.2010}

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-O 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 permitted 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 13.8.2010)

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 6.2.2013)

8.3 *The services of an employee may also be terminated by the Company on the following grounds, among others:*

1) *Insolvency*

2) *Conviction by a court of law for criminal offence amounting to moral turpitude;*

3) *Employee engaging himself in other employment without the written permission of the Management or if he is found to have been working elsewhere during the period of leave or while off duty.*

4) *On being declared unfit for further service on medical grounds. Service of an employee may also be terminated in case of absence by the employee on grounds of sickness for a continuous period of more than 14 months if suffering from tuberculosis, leprosy, mental or malignant disease or fracture of lower/upper extremity, and 12 months or more if suffering from any other ailment. ”*

27. The aforesaid statutory provisions governing the field makes it very clear that there is a distinction between the regular, temporary, daily rated, probationary, apprentice and employees on deputation, and they are defined under the definition of Clause.

28. It is true that the Rules are applicable to all employees of the Company, however, employees and probationers are also defined under the Rules under the definition Clause. Rule 8.2, which has been made to be the basis of payment of three months' salary in lieu of notice starts with the words "*in case of employees*". Rule 8.2 certainly provides that, in case, an employee of level E-O and above wishes to resign, he has to give three

months' notice or three months' salary in lieu of notice. Thus, Rule 8.2 makes it very clear that, in case, an employer wants to terminate an employee of E-O Level, he has to give three months' notice, and in case, an employee wants to resign, he has to give three months' notice or pay in lieu of three months' notice.

29. The appointment order and terms and conditions of the appointment makes it very clear that the Petitioner was appointed as a probationer and the terms and conditions of the appointment order make it very clear that the services of the Petitioner could have been terminated on any point of time without assigning any reason. Meaning thereby, for putting an end to service of a probationer, the condition of notice/ notice period under the rules is not in existence. Therefore, by no stretch of imagination, Rule 8.2 can be made applicable in case of a probationer in the matter of termination.

30. The Appellant did submit a resignation on 15.01.2020, and requested the employer to relieve him on or before 22.01.2020, and the Respondent Employer did sent an E-mail on 21.03.2020 to the Appellant directing him to serve three months' notice or three months' pay in lieu of such notice.

31. The Appellant who was at the receiving end was left with no other option, submitted a letter under protest on 03.02.2020, the same is reproduced as under:

“03.02.2020

GM(HR-ES)
GAIL(India) Ltd.
Bhikaji Cama Palace,
New Delhi

Through Proper Channel
Sub-Representation for Early Relieving

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 dt.23.01.2020 that I am required to serve 3 months' notice or salary in lieu thereof. I further requested for early relieving vide email dt. I 7.02.2020(Copy Enclosed).*
2. *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. However, in case it still remains that I am required to serve 3 months' notice period during probation, then I am submitting the humble request for waiver of 2 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 2 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.*

Submitted Please.

*-Sd.-
Paras Khuttan
Manager(Law)''*

32. The Appellant categorically mentioned in the aforesaid letter that requirement of three months' notice or three month pay in lieu of notice be waived off as he is a probationer and also made a request that, in case, the same is not being waived, he is depositing the amount.

33. The aforesaid letter makes it very clear that the amount was deposited under protest as the condition was not waived.

34. The employer did relieve the Appellant, accepting his resignation and the Appellant was informed accordingly as under:

“From: Neha Srivastava

Sent: Wednesday, February 5, 2020 5:22 PM

To: Paras Khuttan

Cc: Neeta Badhwar; S K Samad; Pawan Kumar – HR-CO

Subject: Regarding resignation from the service of GAIL.

Dear Shri Khuttan,

This is regarding the resignation tendered by you vide letter dated 15.01,2020. Reference is also drawn to your trailing email dated 27.01.2020 vide which you extended your relieving date to 17.02.2020 and also requested for waiver of two months of notice period out of total 03 months of applicable notice period.

In this regard, your resignation w.e.f. 17.02.2020 has been accepted by the Competent Authority subject to clearance of all outstanding dues. Further, your request for waiving off the notice period cannot be acceded to, in the backdrop of existing policy guidelines and extant practice In this regard.

Regards,

Neha Shrivastava

SM (HR-ES) ”

35. The Appellant did submit a detailed appeal in the matter to the Chairman & Managing Director, GAIL for refund of the amount paid by him on 27.05.2020, however, the same was turned down by the General Manager, means by an authority not competent to do so.

36. The order passed by Learned Single Judge in Paragraph 40 to 46 is reproduced as under:

“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 prepayment 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.”

37. The Order passed by the learned Single Judge reveals that the learned Single Judge has not considered the distinction between a “probationer” and an “employee” serving GAIL India Ltd. The general terms and conditions of service rules define an “employee” as well as a “probationer”. They are two distinct categories. Rule 8.2 of the Rules in respect of E-O level employees provides for termination of services by 3 month’s notice or pay in lieu thereof by either side. Meaning thereby, only in case of employees, the mandatory requirement of serving 3 months notice or pay in lieu thereof is in existence. Such a condition is not in existence in respect of probationer. The services of a probationer as per the terms and conditions of the appointment order can be terminated at any point of time without any notice. Therefore, in the considered opinion of this Court, once the employer is having a right to terminate the probationer without issuing any notice or without granting any salary in lieu of notice, the same has to be made applicable in case the probationer wants to leave the job and, therefore, to that extent, the learned Single Judge has erred in law and on

facts in treating the probationer and regular employee at par in the matter of resignation.

38. In an almost similar circumstance, in the case of *Nitin Gupta v. Post Graduate Institute of Medical Education and Research*, MANU/PH/2775/2006, the Petitioner therein was appointed as an Assistant Professor on ad hoc basis in the Department of Psychiatry at Post Graduate Institute of Medical Research, Chandigarh and thereafter he was appointed as an Assistant Professor in Psychiatry on regular basis vide appointment order dated 14.12.2002 and as per condition No.3 of the said appointment letter, it was provided that in case the petitioner resigns during probation, he shall be liable to refund to the Institute all the monies paid to him on account of pay and allowances, etc and for submitting the resignation during probation or after one year of probation, he shall be required to give one month's notice or deposit with the Institute, pay and allowances in lieu of the notice period by which it falls short of one month. Later on, the Petitioner therein, was selected as Consultant in General Psychiatry at South Stafford Shire Health Care, NHS Trust and he submitted a resignation on 14.11.2003. The petitioner therein since had not completed two years of service from the date of his appointed on regular basis, he was permitted to resign on refund of the entire amount received by him on account of pay and allowances for the period from 14.12.2002 i.e. the date of his appointment till the date of resignation and he paid the amount under protest on 19.11.2003 and thereafter, his resignation was accepted on 01.12.2003. The petitioner in those circumstances preferred a writ petition. The Division Bench of Punjab and Haryana High Court has directed refund of the amount.

39. In the case of *Medha Moetra v. Union of India & Ors.*, MANU/WB/2399/2019, W.P.C.T 32 of 2019, a similar view has been taken by the Calcutta High Court.

40. Learned counsel for the respondents has placed reliance upon the judgment delivered in the case of *B.L. Sreedhar* (supra) on the issue of estoppel and his contention is that once the Petitioner has deposited the amount in question, the question of refund does not arise in the facts and circumstances of the case.

41. In the considered opinion of this Court, the Petitioner was selected for some other post and he was required to join the other establishment, he was left with no other choice but to tender his resignation with the request to relieve him on 17.02.2020 and he did make a request to waive the notice period/ payment of salary in lieu of notice period and categorically mentioned that if his request is not accepted by the Department, he should be relieved on 17.02.2020 and in those circumstances he is willing to pay 2 month's salary in lieu of 2 month's notice period. The Petitioner was forced to submit such a letter on 03.02.2020 as he was not relieved by the Department and therefore, the principle of estoppel raised by the respondents will not help them in any manner.

42. The present case is an open and shut case of a probationer whose services could have been terminated at any point of time and the probationer was well within the right to resign at any point of time as he was not an employee and he was not covered under Clause 8.1 of the Regulations governing the field. This Court is of the considered opinion that the order passed by the learned Single Judge deserves to be set aside and is accordingly set aside. The Petitioner is entitled for refund of the amount

deposited by him in lieu of notice period and the same be done positively within a period of 3 months from the receipt of a copy of this Order.

43. With the aforesaid directions, the LPA stands allowed. No orders as to costs.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

SEPTEMBER 08 , 2022
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