

**IN THE COURT OF MS. TWINKLE WADHWA: LD. ADDITIONAL
DISTRICT JUDGE-03:PATIALA HOUSE COURT:NEW DELHI
DISTRICT**

MCA No. 01/18

HDFC Standard Life Insurance Company Limited

Having its Registered Office

at 13th Floor, Lodha Excelus, Apollo Mills Compound,
N M Joshi Road, Mahalaxmi, Mumbai-400011 and

Branch Office at

4th Floor, Vijaya Building,

17 Barakhamba Road, New Delhi-110001.

.....Appellant

VERSUS

Rajesh Chaudhary

S/o Shri Bhushan Chaudhary

R/o B-69, 2nd Floor, Gali No.10,

Shashi Garden, Mayur Vihar Phase-I,

Delhi-110091.

....Respondent

Date of Institution : 22.01.2018

Date of Final Arguments : 08.10.2018

Date of Decision : 08.10.2018

JUDGMENT

The Case-

1. By way of present judgment, I shall dispose of the appeal

filed by Ld. Counsel for the appellant against order of Trial Court dated 20.12.2017.

Facts of the Case-

2. In brief the facts of the case are that the plaintiff/respondent filed a Civil suit before Trial Court thereby submitting that he started working with the appellant on 13.08.2013 and on 02.05.2017, he resigned from defendant's company after serving one month's prior notice. However, he received an email from appellant/employer on 30.05.2017 thereby levying certain allegations and thereby terminating his services. It is the case of plaintiff/respondent that the said email is nothing but a result of frustration in order to usurp the plaintiff's salary and other dues since plaintiff has already resigned.

3. On the other hand, it is the case of present appellant/employer that it is incorrect that plaintiff resigned from services. It is the case of appellant that vide letter dated 08.05.2017, his services were terminated which was again conveyed to him by an email dated 30.05.2017 which is already on record.

4. Pursuant to the case filed by the non-appellant/plaintiff, respondent moved an application under Order 39 Rule 1 and 2 CPC before the Trial Court thereby requesting that his employee

may be asked to supply experience certificate as he worked with his employer/appellant for approximately 3.5 to 4 years and in the absence of experience certificate being issued to him, he is not able to get other employment anywhere and is unemployed till date.

5. However, it is the case of appellant that since they have terminated the services of the plaintiff and in case of termination, experience certificates are not issued. Hence, they have not issued any experience certificate.

6. The order dated 20.12.2017 is challenged on the ground that final relief is given to the plaintiff at the stage of passing interim orders. Further Ld. Trial Court observed that there is no prima facie case in favour of plaintiff yet proceed to grant the relief of experience certificate and is against certain principles of law. Further as per the policy of employer/appellant in case of termination of services, experience certificate is not issued.

Reasons for decision-

7. I have heard both the sides and gone through the record.

8. I have perused the termination letter dated 08.05.2017 filed on record by the appellant which is yet to be proved. Going by the said termination letter, two grounds have been mentioned for termination of the services of the plaintiff i.e. impersonation by

employee and secondly mis-selling. However, the entire written statement is silent that what is the impersonation done by him and what was the act of mis-selling done by him. On being asked the reason for the same, it is submitted by appellant that it shall be proved at the stage of evidence.

9. Whether appellant has terminated the services of the employee or employee/plaintiff has resigned from the service of his employer is a matter to be decided after the trial.

10. However, the matter of fact still remains that employer has not filed any document on record that pursuant to this misconduct, any action was taken against him i.e. departmental enquiry or any civil or criminal action nor the details are mentioned in the written statement.

11. The respondent served his employer from 13.08.2013 till 17.08.2017 i.e. for more than three and a half years. At this stage, it is the averment of the employee that he is not getting any employment in the absence of any experience certificate being issued in his favour. It is further submitted that it affects his fundamental right of life as he is not able to earn his livelihood.

12. I agree with the view proposed by Id. counsel for the employee/plaintiff. Having worked in an organization for more than three and a half years, it is obvious that he would get any further

employment only after he proves having worked for a particular organisation for such a long period of time and produces experience certificate. Though it is correct that in normal circumstances, a final relief cannot be granted at the stage of passing interim orders, however, Ld. Counsel for employee has placed on record a judgment titled as **Ashok Kumar Bajpai Vs. Dr. (Smt.) Ranjana Bajpai, AIR 2004 Allahabad 107** thereby submitting that in exceptional circumstances after recording proper reasons such a relief can be granted and in my view this is one such appropriate and exceptional circumstance. The relevant para is as follows-

“38. In view of the settled legal proposition, the law on the subject can be summarized as under:-

(1) While passing the interim order, the Court must bear in mind the provisions of Order 39 of the CPC while granting the interim relief.

(2) Interim relief should not be granted merely by asking that there must be sufficient ground for granting such relief.

(3) Interim relief which amounts to final relief which could have been granted at the time of final determination of the case should not be granted.

(4) In exceptional circumstances where the fact situation requires the Court to pass an interim relief amounts to final relief, the Court must record the reasons so that its correctness may be examined by the Party/Revisional Court.

(5) Appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules is not maintainable against every interim

order, but where the Court has granted interim relief which amounts to final relief or where the order passed has trapping of the judgment, the appeal is maintainable.”

13. On the basis of overall facts of the case where employer has not even given specific averments in the plaint thereby specifying what was the impersonation and mis-selling nor any document to support their contention is filed. In my opinion, employee/plaintiff has a prima facie case in his favour. Hence, the Trial Court was incorrect in observing that there is no prima facie case in the absence of any specific Clause. Even if there is no specific clause, even then propriety demands that an employer would issue experience certificate to an employee who has worked for it. Further plaintiff would suffer irreparable loss and injury if this relief by way of experience certificate is not granted to him at this stage. Further no harm is going to be caused to the employer if such a relief is granted.

14. However, it is the argument of Ld. Counsel for employer that in case they issue an experience certificate without mentioning reasons for termination, it would mislead subsequent employer regarding the conduct of the plaintiff. However, the same is to be seen after trial whether there is actually any misconduct on the part of an employee or not. Moreover, in the absence of specific pleading regarding the same, I am not convinced with the

argument proposed by counsel for employer at this stage.

15. In the circumstances, appeal is dismissed. Employer is directed to issue letter in the form of experience certificate to the employee/respondent within 30 days thereby specifying the duration for which he has worked and the post he has worked on.

16. Appeal accordingly disposed off.

Trial Court record be sent back.

File be consigned to record room.

**Announced in an open Court
On 08th day of October, 2018.**

**(TWINKLE WADHWA)
ADJ-03/PHC/NEW DELHI
08.10.2018**