2025:DHC:5678

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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **CS(OS) 31/2021**

ABHIJIT MISHRA
S/O (LATE) MR. OM PRAKASH MISHRA,
R/O 7 PRIYA ENCLAVE,
DELHI 110092

...PLAINTIFF

.

(Through: Mr. Abhijit Mishra, plaintiff in person.)

Versus

WIPRO LIMITED
THROUGH THE EXECUTIVE CHAIRMAN
480-481, PHASE III, UDYOG VIHAR,
GURUGRAM, HARYANA – 122016.

....DEFENDANT

(Through: Mr. Mandeep Singh Vinaik, Ms.Ragini Vinaik and Mr. Gaikhuanlung, Advs.)

% Reserved on: 26.05.2025
Pronounced on: 14.07.2025

J U D G M E N T

The plaintiff has filed the present suit, claiming damages amounting to Rs. 2,10,00,000/- for alleged defamation by his employer, asserting that the

imputations made in the termination letter are contrary to the employment contract and have caused serious injury to the plaintiff's reputation and goodwill.

2. The following prayers have been made by the plaintiff in the plaint: -

> "*A. Kindly grant a decree in favor of the Plaintiff and hold the Defendant i.e. Wipro Limited guilty of tort of defamation and injuria sine damnum.*
>
> *B. Kindly direct the Defendant i.e. Wipro Limited to issue a new discharge letter expunging the negative remarks about the Plaintiff along with the sincere letter of apology for the cause of defamation and loss of reputation.*
>
> *C. Kindly be pleased for the grant of Rs. 2,10,00,000 (Indian National Rupees Two Crore and Ten lacs Only) as a damage to the plaintiff caused by the tortuous conduct of the defendant and violation of Right to Dignity as enshrined under Article 21 of the Constitution of India citing the legal Doctrine of Injuria Sine Damnum*."

Factual Matrix

3. The plaintiff was employed by the defendant i.e., Wipro Limited, as a Principal Consultant from 14.03.2018 until 05.06.2020. His employment was governed by a contract (hereinafter referred to as the *'employment contract'*) and Clause 10 thereof expressly provided that the employment could be terminated without any reason, by either party upon serving the requisite notice period, i.e., one month during the probationary period and two months after confirmation.

4. On 05.06.2020, the defendant, through its authorized representative Mr. Srinath Sridharan, issued a termination/relieving letter. The letter attributes the conduct of the plaintiff as "*malicious*" and

further claims that his actions had resulted in an irreparable breakdown in the employer-employee relationship.

5. Aggrieved by the aforesaid allegedly defamatory remarks contained in the termination letter, the plaintiff has instituted the present suit seeking the issuance of a fresh termination letter expunging the observations impugning the plaintiff's character and professional integrity.

6. Upon receipt of the summons, the defendant entered appearance and filed a written statement, categorically denying the averments made by the plaintiff. The defendant has sought to justify the issuance of the termination letter as being in strict conformity with the procedure stipulated under the employment contract. According to the defendant, the remarks impugned by the plaintiff are merely reflective of the plaintiff's conduct during the tenure of his employment and were necessitated by the circumstances culminating in his termination.

Submissions

7. The plaintiff in person avers that the impugned termination letter is replete with defamatory and derogatory assertions that are unsubstantiated and, in effect, serve to malign his character. It is contended by him that such vague and baseless allegations flagrantly contravene Clause 10 of the employment contract between the parties.

8. He further contends that the allegations contained in the impugned termination letter, including the usage of words like

"*malicious conduct*" and "*complete loss of trust*," are baseless and have been made in a manner that is both defamatory and vexatious.

9. Moreover, it is contended by the plaintiff in person that he had duly exercised his right by making an appeal and representation against the impugned termination letter. Despite the aforesaid, according to the plaintiff, the defendant denied him an opportunity to defend himself against the spurious claims in the impugned termination letter. It is further contended that the absence of any material evidence to corroborate the alleged misconduct reinforces the position that the termination was arbitrary and capricious, amounting to an abuse of the contractual prerogative.

10. Moreover, it is averred by the plaintiff that the adverse remarks contained in the impugned termination letter have had a deleterious impact on his professional reputation, rendering him unable to secure any alternative employment. It is further submitted by him that the defendant's actions amount to a violation of his fundamental right to life with dignity as enshrined in Article 21 of the Constitution of India (hereinafter referred to as the *'Constitution'*) and constitute a breach of contractual obligations.

11. According to the plaintiff, the termination of the plaintiff by the defendant, executed under the guise of contractual provisions, was marred by defamatory assertions that lack any basis. It is also contended that the defendant's conduct is indicative of a deliberate disregard for the principles of natural justice and contractual fairness, thereby

entitling him to seek a redressal for the injuries caused to his reputation and livelihood.

12. He places reliance on the decision of this Court in ***SP Sharma v. IFCI Ltd***.[1], ***Himanshu Bhatt v. Indian Railway Catering and Tourism Corporation***[2], ***Shobhna Bhartia v. State of NCT of Delhi***[3], and the decision of the Court of England and Wales in ***Drummond -Jackson v. British Medical Association***[4].

13. *Per Contra*, Mr. Mandeep Singh Vinaik, learned counsel appearing for the defendant, contends that the plaint does not disclose any cause of action and must be dismissed on this ground alone. In addition, it is also contended that the plaintiff has failed to establish any instance of offending statements being broadcast or transmitted to members of the public or any person other than the plaintiff himself.

14. Learned counsel further submits that the plaintiff was employed with the defendant as a Principal Consultant, which is a senior, creative, and managerial position that demanded highly creative and original work. However, the plaintiff, according to learned counsel, instead of focusing on his professional duties and honoring his commitment to the employer, was more invested in his self-styled identity as a "Crusader for Social Change", engaging in activities unrelated to his work. Learned counsel avers that the plaintiff himself admitted to his inability

[1]2015 SCC OnLine Del 11311
[2]2015 SCC OnLine Del 12393
[3]2007 SCC OnLine Del 1301
[4] 1970 1 (WLR) 688

to discharge his professional duties in an email to Mr. Ajay Nahar, with a copy marked to his Reporting Manager, Mr. Shri Dhar. In this communication, according to the learned counsel, the plaintiff acknowledged that he felt he did not fit in with his job or team and requested a transfer.

15. Learned counsel, therefore, contends that when given an opportunity to improve his performance, the plaintiff chose to issue communications to the senior management of the defendant, in utter insubordination. Mr. Vinayak further submits that the negative attitude of the plaintiff resulted in him being placed on a Performance Improvement Plan (hereinafter referred to as *'PIP'*) by the defendant. Instead of taking this opportunity to improve his performance, according to the learned counsel, the plaintiff began a campaign of complaints, writing numerous grievances to various individuals and agencies.

16. Further, learned counsel for the defendants contends that the behaviour of the plaintiff demonstrated his lack of interest in improving his professional performance, which ultimately led to the termination of his employment.

17. Learned counsel further argues that the communications issued by the defendant to the plaintiff were personal and justified. He also avers that no public communications were ever published or transmitted by the defendant, as admitted by the plaintiff. Furthermore, it is stated by Mr. Vinayak that the termination of the services of the plaintiff was duly communicated to him in accordance with the employment contract, and two months' notice pay was credited to his account.

18. Furthermore, it is also averred by the learned counsel for the defendant that the employment was entirely contractual, and the defendant had the right to terminate the services of the plaintiff due to his unsuitability for the job. Additionally, learned counsel submits that the plaintiff was responsible for his termination due to his lack of professional focus and commitment.

19. Mr. Vinayak, therefore, contends that the statement in the impugned termination letter was a factual account of the conduct of the plaintiff and there has been no loss to the reputation and livelihood of the plaintiff, as he is currently working as an Advocate practicing in various Courts at Delhi, including the Supreme Court and this Court.

20. Learned counsel places reliance on the decisions in ***S.T.P. Singh v. Tarsem Singh and Ors***[5], ***Queen Empress v. Taki Husain***[6], ***Khima Nand and Another v. Emperor through Prem Singh***[7], ***Kundanmal S/c Mulchand v. Emperor***[8], ***Lachhman v. Pyarchand***[9], ***Sardar Amar Singh v. K. S. Badalia***[10], ***Challa Subbarayadu v. Darbha Ramakrishna Rao***[11], ***P.R. Ramakrishnan v. SubbarammaSastrigal and Anr***[12], ***S.S. Sanyal and Another v. K.V.R. Nair and Ors***[13], ***Bilal Ahmed Kaloo v.***

[5]2018 SCC OnLine Del 9978
[6]1884 ILR 7 ALL 205
[7] 1936 SCC OnLine All 307
[8] AIR 1943 Sind 196
[9] 1959 SCC OnLine Raj 18
[10]1964 SCC OnLine Pat 186
[11]1967 SCC OnLine AP 137
[12]1986 SCC OnLine Ker 309
[13]1987 Crl. L.J. 2074

State of Andhra Pradesh[14]***, and Smt. Dr. Nagarathinam v. M. Kalirajan***[15].

21. I have heard the plaintiff in person, learned counsel appearing for the defendant, and have perused the record.

22. *Vide* order dated 26.07.2022, the following issues were framed:-

> *"1. Whether the service (employment) of the plaintiff was wrongly terminated by the defendant in violation of the Employment Contract? OPP*
>
> *2. Whether the statement in the impugned termination letter, as issued by the defendant has resulted in the defamation of the plaintiff? OPP*
>
> *3. In the event, issue No.l being decided in favour of the plaintiff whether the defendant 's action of termination of the plaintiff's services has caused damage to the plaintiff? OPP*
>
> *4. Relief"*

23. The Court also takes note of the fact that parties have examined the following witnesses:-

a. Mr. Abhijit Mishra as Plaintiff Witness No. 1 ***(PW-1)***

b. Mr. Raja Jassal as Plaintiff Witness No. 2 ***(PW-2)***

c. Mr. Mansatkar Singh as Defendant Witness No.1 ***(DW-1)***

24. It is also seen that the defendant has not placed on record any document. The joint document schedule has listed the following documents:-

Particulars of the Document	Exhibited as
The true copy of the Plaintiff's ID Card and employee letters	**Ex P-1**

[14]1997) 7 SCC 431
[15]2001 SCC OnLine Mad 355

The true copy of the termination letter vide letter ref. no. WC/T/20004452/40 Dated 05.06.2020	**Ex P-2**
The true copy of the employment contract of the plaintiff	**Ex P-3**
The true copy of the appeal against the termination letter from the plaintiff	**Ex P-4**
The true copy of the legal notice of the plaintiff	**Ex P-5**

25. Further, the plaintiff has also exhibited the following documents during the evidence:-

Ex. PW-2/1 – True copy of the Aadhaar Card of the Deponent(PW-2);

Ex. PW-2/2 – True copy of employment document with Oracle India Pvt. Ltd.;

Ex. PW-2/3 – True copy of relieving letter issued by Defendant (Wipro Ltd.);

Ex. DW-1/P1 – Archived Annual Appraisal for 2018–2019 of the Plaintiff;

Ex. DW-1/P2 – Wipro Leaders' Qualities Survey 2018–19, Leader Report for Abhijit Mishra;

Ex. DW-1/P3 – Performance appraisal (Q3 2019–20) from 'my Career portal';

Ex. DW-1/P4 – Email dated 09.04. 2020 from Navonil Rahut to Plaintiff;

Ex. DW-1/P5 – Certified copy of a document titled "PIP INITIATION" from MyCareerPortal

Ex. DW-1/P6 – Email dated 26.03.2020 from Plaintiff to Shri Dhar & Ajay Nahar;

Ex. DW-1/P7 – Certified copy of Plaintiff's RTI Application and Reply from Supreme Court of India;

Ex. DW-1/P8 – Certified copy of High Court of Delhi (PIL) Rules, 2010;

Ex. DW-1/P9 – Email dated 04.01.2019 from Aditya Vikram to Tarun Kumar (with trail);

Ex. DW-1/P10 – Performance Improvement Plan Policy of Wipro Ltd.;

Ex. DW-1/P11 – Email & Letter dated 21.04.2020 from Plaintiff to Executive Chairman (Rishad Premji);

Ex. DW-1/P12 – Email & Letter dated 21.04.2020 from Plaintiff to CEO (Abidali Neemuchwala);

Ex. DW-1/P13 – Email & Letter dated 21.04.2020 from Plaintiff to CHRO (Saurabh Govil);

Ex. DW-1/P14 – Legal Notice dated 28.05.2020 sent by Plaintiff's counsel to Wipro management;

Ex. DW-1/P15 – Email dated 03.06.2020 from Plaintiff to Srinath Sridharan (HR);

Ex. DW-1/P16 – Email communication dated 27.05.2020 between Plaintiff and Shri Dhar;

Ex. DW-1/P17 – Ombuds Policy of Wipro Ltd. (Version 5.5, Dec 2019);

Ex. DW-1/P18 – Email dated 11.04.2020 from Plaintiff to Wipro's Ombudsman;

Ex. DW-1/P19 – Annual Board's Report dated 9.06.2021 (FY ending March 31, 2021) by Executive Chairman.

Ex. DW-1/P20 – Cross-examination dated 1.03.2024 of Mr. Mansatkar Singh in CS no. 7 of 2021

Ex. DW-1/P21 (Colly) – Acknowledgements of Plaintiff's Income Tax Returns (AYs 2018–2024)

26. Apart from the aforesaid, the plaintiff has also placed reliance upon the following documents:-

'Mark A' - Copy of letter dated 04.09.2020 issued by Kridhavan Agro Pvt. Ltd.

'Mark B' - Copy of letter dated 12.12.2020 issued by Depavani Metals Pvt. Ltd.

Issue-wise analysis

27. At the threshold, it is pertinent to observe that issue No. 3 is contingent upon the determination of issue No. 1. Accordingly, for the sake of brevity, both issues shall be considered and decided conjointly.

> ***Issue no.1****- Whether the service (employment) of the plaintiff was wrongly terminated by the defendant in violation of the Employment Contract? OPP*
>
> ***Issue No.3*** *- In the event, issue No.l being decided in favour of the plaintiff whether defendant's action of termination of the plaintiff's services has caused damage to the plaintiff? OPP*

28. At the outset, it is noted that the factum of employment of the plaintiff with the defendant is undisputed. The plaintiff was employed under an employment contract dated 14.03.2018. Clause 10 of the said contract, titled "Notice Period", states that either party may terminate the employment without assigning any reasons by giving one month's notice during the probationary period, and two months' notice post confirmation.

29. It further provides that the employer/defendant reserves the right to pay or recover salary in lieu of the notice period and may, at its discretion, relieve the employee from such date as it deems fit, even before the expiry of the notice period. The relevant portion of the employment contract reads as follows:

> "*10.NOTICEPERIOD*
>
> *This contract of employment is terminable, without reasons, by either party giving one month notice during probationary period and two months' notice on confirmation. Wipro reserves the right to pay or*

recover salary in lieu of notice period. Further, the Company may at its discretion relieve you from such date as it may deem fit even prior to the expiry of the notice period."

30. Furthermore, it is also seen that the impugned termination letter, exhibited as Ex P-2, issued by the defendant explicitly invokes Clause 10 of the appointment letter to give effect to the termination and states as follows:

"*This is to bring to your attention Clause 10 of your appointment letter dated March 14, 2018. The clause provides that the employment contract is terminable, without reasons, by either party giving one month notice during probationary period and two months' notice on confirmation. Wipro reserves the right to pay or recover salary in lieu of notice period. Further, the Company may at its discretion relieve you from such date as it may deem fit even prior to the expiry of the notice period.*

We are hereby exercising our rights under this clause and terminating your employment contract with immediate effect."

"*We were compelled to take this difficult decision on account of a complete loss of trust and confidence between us due to your actions and malicious conduct in the past weeks. We believe that an effective and fruitful employer-employee relationship between Wipro and you is no longer possible, as we have lost trust in your ability to perform your duties without prejudice, serve our clients effectively, or work with our employees as a team."*

31. A thorough scrutiny is necessary to determine if the impugned termination letter breaches the employment contract.

32. A meticulous perusal of Clause 10 of the employment contract unequivocally permits the termination of the contractual engagement by either party. It also states that during the probationary period, the employment may be terminated upon issuance of one month's notice; whereas post-confirmation, the requirement escalates to a notice period of two months. The said clause further accords the employer the

discretion to either compensate the employee *in lieu* of the stipulated notice period or recover the commensurate sum thereof from the employee. Additionally, the employer is vested with the unilateral authority to dispense with the services of the employee even prior to the expiry of the prescribed notice period.

33. At this juncture, it is pertinent to first examine whether the clause of such tenor would render the contract in the present case determinable in nature. Section 14(d) of the Specific Relief Act, 1963 (hereinafter referred to as *'SRA'*), specifies agreements which are "*in their nature determinable*". A determinable contract is, by definition, one that confers upon either party an unfettered right to terminate the contractual arrangement unilaterally, whether at will or upon service of notice, without the presence or requirement of any breach or default.

34. Clause 10, under the consideration herein, squarely fits within the aforementioned legal construct, as it empowers the employer to bring the employment relationship to a cessation solely upon notice or, alternatively, upon payment of salary *in lieu* thereof, with the additional prerogative of curtailing the notice period unilaterally. Effectively, the termination clause does not presuppose the existence of any reason or breach, or violation of the employment agreement for the invocation of the termination clause, thereby reflecting the essential character of a determinable contract. However, for the completion of reasoning, it may be noted that mere presence of a pre-condition of termination does not *ipso facto* alter the determinable nature of the contract.

35. Recently, this Court in ***Gaurav Rajgaria v Maruti Suzuki India Limited***[16] held that a contract which, by its nature or explicit terms, allows termination by either party, whether with or without assigning reasons, is considered to be determinable. The Court held that such a determinable contract is not specifically enforceable under Section 14(d) of the SRA. The Court held that even if the termination is effected pursuant to a "for cause" clause, the very presence of a termination mechanism within the contract renders it determinable in law. The Court held that, in such cases, the only remedy available to the aggrieved party is monetary compensation, typically confined to the contractual notice period, and not the equitable relief of specific performance or injunction.

36. Relying upon the decisions in ***Indian Oil Corporation Ltd. v. Amritsar Gas Service***[17], ***Rajasthan Breweries Ltd. v. Stroh Brewery Co***.[18], and ***Beoworld Pvt. Ltd. v. Bang & Olufsen Expansion*** [19], the Court reaffirmed that private commercial agreements are presumed to be terminable unless explicitly rendered irrevocable. Even where the agreement permits termination only upon the occurrence of certain events, it remains determinable in the eyes of the law from the point of view of specific enforcement.

37. Therefore, Clause 10 of the employment contract unequivocally renders the nature of the contract to be determinable.

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[16]2025:DHC:5253
[17](1991) 1 SCC 533
[18]2000 SCC OnLine Del 481
[19]2020 SCC OnLine Del 3250

38. The Court shall now discuss the approach to be adopted while considering a claim of the ousted employee for compensation/damages on account of alleged wrongful termination. In doing so, it is necessary to take a brief detour to underscore that in determinable employment contracts, the relief of specific performance or reinstatement against the will of the employer is not available.

39. In the ***Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain***[20], the Supreme Court clarified the contours of specific enforceability of contracts of personal service. While reiterating that ordinarily such contracts are not specifically enforceable, the Court carved out three narrow exceptions: (i) where a public servant is dismissed in contravention of Article 311; (ii) where a worker seeks reinstatement under Industrial Law; and (iii) where dismissal contravenes a statutory obligation imposed on a statutory body. It was unequivocally held that in the absence of these conditions, specific performance would not be granted. The Court reasoned that enforcing such contracts would, in effect, compel the continuation of a personal and confidential relationship, which is fundamentally antithetical to the principle of voluntariness underpinning the contract law. The relevant extract of the aforementioned decision reads as under:-

> *"15. This brings us to the next point for consideration as to whether or not the plaintiff/respondent's case fell within the exceptions laid down by this Court to the general rule that the contract of personal service is not specifically enforceable. In this connection, as early as 1964, in S.R. Tewari v. District Board, Agra [AIR 1964 SC 1680*

[20](1976) 2 SCC 58

:(1964) 3 SCR 55, 59 : (1964) 1 LLJ 1] this Court observed as follows:

"Under the common law the Court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But this rule is subject to certain well recognised exceptions. It is open to the courts in an appropriate case to declare that a public servant who is dismissed from service in contravention of Article 311 continues to remain in service, even though by so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly under the industrial law, jurisdiction of the Labour and Industrial Tribunals to compel the employer to employ a worker, whom he does not desire to employ, is recognised. The courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do."

To the same effect is the decision of this Court in Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi [(1969) 2 SCC 838 : (1970) 2 SCR 250, 265] , where it was observed as follows : [SCC p. 850, para 23]

"From the two decisions of this Court, referred to above, the position in law is that no declaration to enforce a contract of personal service will be normally granted. But there are certain well-recognised exceptions to this rule and they are : To grant such a declaration in appropriate cases regarding (1) A public servant, who has been dismissed from service in contravention of Article 311. (2) Reinstatement of a dismissed worker under industrial law by Labour or Industrial Tribunals. (3) A statutory body when it has acted in breach of a mandatory obligation, imposed by statute."

16. In Indian Airlines Corporation v. Sukhdeo Rai this Court also observed as follows : [SCC p. 193, para 3]

"It is a well settled principle that when there is a purported termination of a contract of service, a declaration, that the contract of service still subsisted, would not be made in the absence of special circumstances because of the principle that courts do not ordinarily grant specific performance of service. This is so, even in cases where the authority appointing an employee was acting in exercise of statutory authority. The relationship between the person appointed and the employer would in such cases be contractual i.e. as between

a master and servant, and the termination of that relationship would not entitle the servant to a declaration that his employment has not been validly determined."To the same effect is the decision of this Court in Bank of Baroda v. Jewan Lal Mehrotra [(1970) 3 SCC 677 : (1970) 2 LLJ 54, 55] where this Court observed as follows : [SCC p. 678, para 3]"The law as settled by this Court is that no declaration to enforce a contract of personal service will be normally granted. The well recognised exceptions to this rule are (1) where a public servant has been dismissed from service in contravention of Article 311; (2) where reinstatement is sought of a dismissed worker under the industrial law by labour or Industrial Tribunals; (3) where a statutory body has acted in breach of a mandatory obligation imposed by statute;"

17. In the Sirsi Municipality case the matter was exhaustively reviewed and Ray, J. (as he then was) observed as follows : [SCC p. 413 : SCC (L&S) p. 210, paras 15-17]"The cases of dismissal of a servant fall under three broad heads, purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of founding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal service. Such a declaration is not permissible under the law of Specific Relief Act. The second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under Industrial Law. This relief is a departure from the reliefs available under the Indian Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant.

The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute."

18. On a consideration of the authorities mentioned above, it is, therefore, clear that a contract of personal service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is

subject to three well recognised exceptions — (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute."

40. In ***J. Tiwari v. Jwala Devi Vidya Mandir***[21], the Supreme Court followed the *ratio* of ***Vaish Degree College***. The Court held that where an employment contract is terminable by notice, and the employer has acted in breach of such contractual terms, the only available relief is damages, not reinstatement or continuation of service. Importantly, the Court also emphasized that Section 14(d) of the SRA acts as a statutory bar to specific enforcement of such determinable contracts.

41. A similar position has been taken by the Supreme Court in ***Binny Ltd. & Anr. v. V. Sadasivan***, [22] wherein, while making the categorical distinction between public employment and private contractual relationships, it was held that the principles of administrative law and public law, including the doctrine of natural justice, do not extend to private employment contracts.

42. This Court in ***L.M. Khosla v. Thai Airways International Public Co. Ltd***.[23], relying on the decisions in ***S.S. Shetty, Vaish Degree College,*** and ***Binny***, summarised the applicable legal principles holding *inter alia* that- (i) employment contracts of a private nature do not attract public law remedies; (ii) where a contract provides for

[21](1979) 4 SCC 160
[22](2005) 6 SCC 657
[23]2012 SCC OnLine Del 4019

termination by notice, only monetary compensation limited to the notice period is recoverable in law; and (iii) under Section 14 of SRA, determinable contracts are statutorily exempted from specific performance.

43. Likewise, in ***Satya Narain Garg v. DCM Ltd***.[24] and in ***GE Capital Transportation Financial Services Ltd. v. Tarun Bhargava***[25], this Court reiterated that in cases involving private employment, the scope of judicial review is limited, and the remedies are governed solely by contract law principles. It was affirmed that the rights of the employees are confined to what is stipulated in the contract, and even if termination is wrongful, Courts will not grant reinstatement unless it falls within the exceptions recognised by the Supreme Court in ***Vaish Degree College***.

44. In ***Pawan Kumar Dalmia v. Tata Finance ltd***.,[26] the Court once again applied this settled line of reasoning to hold that in a private employment dispute, the employee could not seek a declaration that the termination was void or seek reinstatement. The Court emphasised that the employment being purely contractual and terminable by notice, the appropriate remedy, if any, was damages in terms of the notice period, thereby reinforcing the limited enforceability of determinable personal service contracts.

[24]2011 SCC OnLine Del 5205
[25]2012 SCC OnLine Del 1684
[26] 2012 SCC OnLine Del 1508

45. More importantly, in ***S.S. Shetty v. Bharat Nidhi Ltd***.[27], the Supreme Court held that, where a master wrongfully dismisses a servant, the servant is entitled only to such damages as would compensate for the loss of income during the notice period or until alternative suitable employment is secured, whichever is earlier. Where the employment contract provides for termination by notice, the quantum of damages is ordinarily restricted to the wages payable during that notice period. The Supreme Court in the aforesaid decision further clarified that compensation cannot be awarded for emotional distress, injury to reputation, or the added difficulty in obtaining new employment resulting from the dismissal. A wrongfully dismissed employee is under a duty to mitigate damages by making reasonable efforts to secure other employment, and any suitable offer received may be taken into account in assessing the final amount of compensation. Paragraph no. 12 of the judgment specifically reinforces this principle, and the same reads as under:

> *"12. The position as it obtains in the ordinary law of master and servant is quite clear. The master who wrongfully dismisses his servant is bound to pay him such damages as will compensate him for the wrong that he has sustained. "They are to be assessed by reference to the amount earned in the service wrongfully terminated and the time likely to elapse before the servant obtains another post for which he is fitted. If the contract expressly provides that it is terminable upon,. e.g., a month's notice, the damages will ordinarily be a month's wages .... No compensation can be claimed in respect of the injury done to the servant's feelings by the circumstances of his dismissal, nor in respect of extra difficulty of finding work resulting from those circumstances. A servant who has been wrongfully dismissed must use diligence to seek another employment, and the fact that he has been*

[27] 1957 SCC OnLine SC 29

offered a suitable post may be taken into account in assessing the damages." (Chitty on Contracts, 21st Edn., Vol. (2), p. 559 para 1040)."

46. An upshot of the aforementioned precedents indicates that normally, in the domain of private employment governed exclusively by a contract, the consequence of wrongful termination is determined by the character of the agreement itself. Such agreements, founded on mutual volition, fall outside the scope of judicial enforcement.

47. Consequently, even if the termination is alleged to be arbitrary, *mala fide*, or procedurally flawed, the remedy in such cases remains confined to monetary compensation. As discernible from the precedents discussed above, the Courts have declined to interfere in such private employment arrangements, recognizing that any equitable relief is incompatible with the principles of contractual autonomy and the intrinsically esoteric character of the employment relationship.

48. In the context of a purely private and determinable contract of employment, such procedural irregularities cannot be assessed through the prism of public law norms or statutory provisions. The private employment relationship, being non-statutory and devoid of any public duty overlay, is governed exclusively by the terms mutually negotiated by the individual contracting parties. To import equitable or administrative yardsticks into such private engagements would amount to a dilution of the doctrine of contractual autonomy. It would, in effect, superimpose obligations that neither emanate from statute nor arise *ex contractu.*

49. In the present case, the plaintiff has, with conscious restraint, avoided any prayer for reinstatement or specific performance. The relief sought is confined to a declaratory finding of termination being in violation of the employment contract and consequential damages. However, this distinction does not expand the scope of judicial intervention in any manner whatsoever.

50. Even assuming procedural infirmities or *mala fides* in the process leading to termination, the determinable nature of the contract and the termination clause are undeniable. Furthermore, while Clause 10 permits termination without assigning reasons, it does not prohibit the furnishing of justiciable reasons should the employer choose to do so. The mere act of providing a rationale, in exercise of discretion, does not transform the nature of the termination or invite a higher standard of scrutiny. First and foremost, the very factum of crystallising in contractual terms the idea of termination without assigning reasons gives sufficient leeway to terminate without reasons or for reasons which may not be justiciable in a strict sense. That is the nature of the clause, which has been accepted with free will by both sides. Even otherwise, if some reasons are assigned by the employer, it would not mean that the mere act of assignment of reasons would render an employer susceptible to a heightened judicial scrutiny of termination, akin to the judicial review of termination in the realm of public law. The limited scope of consideration envisaged in purely private contractual engagements does not call for a dissection of the reasons mentioned in the termination letter on the touchstone of procedural requirements,

ordinarily implicit in relationships governed by public law, so as to determine whether the termination was just or not. Moreover, the defendant has also complied with Clause 10 by disbursing two months' notice pay, thereby satisfying its contractual obligation.

51. Accordingly, in the present factual matrix, where the employment contract is unequivocally determinable at the discretion of either party in accordance with its express terms, the remedy available to the plaintiff is only confined to compensatory relief in the form of liquidated damages. Furthermore, such compensation is strictly calibrated to the quantum of salary corresponding to the stipulated notice period, which has already been duly remitted by the defendant.

52. Furthermore, while the plaintiff may have demonstrated certain lapses in the internal processes of the defendant company, these do not translate into a justiciable claim for enhanced compensation or declaratory relief. The sanctity of the private contractual arrangement must take precedence. No doubt, the termination may have caused distress to the plaintiff. However, the precedents discussed above categorically indicate that emotional distress, challenges in securing future employment, inconvenience etc., of the ousted employee cannot be countenanced in light of a determinable termination clause, for the purpose of quantification of damages/compensation when the employment contract itself restricts such compensation to the salary of the prescribed notice period.

53. Therefore, issues. 1 and 3 are decided against the plaintiff.

Issue No.2: *Whether the statement in the impugned termination letter as issued by the defendant, has resulted in the defamation of the plaintiff? OPP*

54. In addition to asserting that the termination letter is in contravention of the employment contract, the plaintiff has further contended that the expressions employed therein, most notably the phrases "*malicious conduct*" and "*complete loss of trust*", are inherently defamatory and have resulted in serious damage to the reputation of the plaintiff.

55. At this juncture, it is imperative to emphasize that every individual is vested with an intrinsic right to reputation, which has been recognised as an integral facet of the right to life under Article 21 of the Constitution. Any act that infringes this right is often termed as defamatory. Interestingly, the concept of defamation has been envisaged as an exception to the freedom of speech and expression under Article 19 of the Constitution. It is so because an act of defamation is committed in the course of free exercise of the freedom of speech and expression, when such exercise breaches the permissible limits of speech and transcends from the permissible to the impermissible. To establish any injury or harm to the reputation of a person, whether through spoken or written word, it is incumbent upon the aggrieved party to demonstrate the fulfillment of the essential elements of defamation. It is necessary to enforce the law of defamation within its strict confines and upon strict fulfilment of the pre-conditions, as any excessive enforcement may have a chilling effect on the cherished

freedom of speech and expression. Thus, while dealing with defamation, the Court always treads a cautious path.

56. Civil defamation, though uncodified, in the Indian context is governed by common law principles derived from the English jurisprudence. It refers to a tortious wrong whereby a person makes a false imputation having the tendency to diminish another's reputation in the estimation of right-minded members of society. The essential constituents of civil defamation may be summarised as follows:

(i) a false statement, whether written (libel) or spoken (slander); and defamatory in nature i.e., it must have the effect of lowering the reputation in the eyes of others (right-thinking members of the society);

(ii) publication of such statement to at least one person other than the plaintiff; and

(iii) identifiability, i.e., the statement must refer to the plaintiff either expressly or by implication

(iv) Absence of a valid defence such as justification, truth, or privilege.

57. The first essential of civil defamation is the existence of a defamatory statement. The statement must be such that it tends to expose the plaintiff to hatred, ridicule, or contempt, or to cause them to be shunned or avoided by society, thereby lowering their moral or intellectual character in public estimation. It is not sufficient that the words are insulting or unkind; they must carry a false and defamatory

imputation when viewed through the lens of a reasonable person. Even *innuendo,* where defamatory meaning is implied, not stated expressly, can satisfy this requirement, provided it would be so understood by those acquainted with the plaintiff's background.

58. The second requirement is publication, which is the act of communicating the defamatory content to at least one person other than the person defamed. It is well established that communication of the fact to a third party is indispensable for a successful civil action. If the statement is made directly and solely to the plaintiff, the tort of defamation is not complete, as injury to reputation presupposes the perception of others. The nuanced concept of defamation does not take into account the personal perception of the person allegedly defamed; rather, it takes into account the perceptional effect of the statement on others (subjectively addressed as 'reasonable man', 'reasonable woman' or 'right thinking members of the society'). The essential nature of publication in cases of defamation has also been reiterated by the Court in ***Ruchi Kalra and Ors v. Slowform Media and ors*** [28]. The Court held that publication is a *sine qua non* for the tort of defamation, as the actionable wrong arises only upon communication of the defamatory matter to a third party, thereby effectuating injury to the plaintiff's reputation in the estimation of right-thinking members of society. It emphasised that mere authorship or printing does not suffice; rather, liability accrues upon the act of making the defamatory content known

[28]2025 : DHC: 2024

to others, whether through circulation, dissemination, or authorisation. The Court further clarified that jurisdiction vests where the defamatory material is accessed and reputational harm is suffered, and that the tort is consummated only when the defamatory imputation attains public knowledge, thereby giving rise to civil consequences actionable under law. The relevant extracts of the aforesaid read as under:-

> "*Decoding the ambit of "publication" in defamation*
>
> *44. Publication of the defamatory statement is an essential element of thecause of action in a suit for damages for defamation. The injury caused by alibel arises from the effect produced upon its readers. Publication means theact of making the defamatory statement known to any person or personsother than the plaintiff himself (see Salmond on Torts, page-215, FourteenthEdition). It is the communication of words or doing the defamatory act inthe presence of at least one person other than the person defamed. In thecase of Khima Nand v. Emperor 16, it was held as under:-"There can be no offence of defamation unless the defamatorystatement is published or communicated to a third party, that is, toa party other than the person defamed."*
>
> *45. Publication is the act of making known the defamatory matter, after ithas been written, to some person other than the person about whom it is written. Liability for a publication arises from participation or authorisation. Thus, where a libel is published in a newspaper or book, everyone who has takenpart in publishing it, or in procuring its publication, or has submitted material published in it, is prima facie liable (see Gatley, page-234, Eighth Edition). To put it otherwise, an act of publication involves a wide range of15 (2022) 10 SCC 1.16 1936 SCC OnLine All 307.22actions and could be done in any manner, however, the elementary test iswhether the act complained of has exposed the defamatory matter to any person other than the defamed person.*
>
> *46. Reference can be made to the decision of this Court in the case ofFrank Finn Management Consultants v. Subhash Motwani17 wherein it was held that publication in the sense of a libel is not the mechanical act of printing of the magazine but is of communication of the libelous article to atleast one person other than the plaintiff or the defendant. The relevant extracts of the decision read as under:-*

> *"17. The wrong within the meaning of Section 19 of the CPC in anaction for defamation is done by the publication. The defendants areconfusing publication in the sense of printing, with publication as inthe case of libel. The publication in the sense of a libel is not themechanical act of printing of the magazine but is of communicationof the libelous article to at least one person other than the plaintiffor the defendant. In this regard also see Aley Ahmed Abdi v Tribhuvan Nath Seth 1979 All. LJ 542. If the magazine, asaforesaid, has a circulation at Delhi, then it cannot be said that thewrong would not be done to the plaintiff at Delhi and thus thecourts at Delhi would have jurisdiction under Section 19 of the Act. A Division Bench in T.N.Seshan v All India Dravida MunnetiraKazahagam 1996 AlHC 4283(AP) has taken the same view. Even If the test of Section 20 of the CPC were to be applied, even then thecause of action in part at least would accrue in Delhi. A Single Judge of the High Court of Bombay in the The State of Maharashtrav. Sarvodaya Industries AIR 1975 Bombay 197 has held that thephrase wrong done in Section 19 would clearly take in not only the initial action complained of but its result and effect also and Section19 is wide enough to take in those places where the plaintiffactually suffered the loss because of the alleged wrongful act. It wasfurther held that the court within whose local jurisdiction damagewas caused or suffered or sustained, would clearly answer therequirements of Section 19 for the purposes of the suits mentionedtherein. I respectfully concur with the said view and unless Section 19 of the CPC is so interpreted, the purpose thereof would bedefeated. Similarly, State of Meghalaya & Ors v Jyotsna Das AIR17 2008 SCC OnLine Del 1049.231991 Gauhati 96 also held that wrong done includes and covers theeffect of the act. The counsel for the defendants has relieduponRashtriya Mahila Kosh v The Dale View 2007 IV AD (Delhi)593 to address the principle of forum non conveniens. With respect,if under the CPC the court has jurisdiction, I find it hard to holdthat on the doctrine in international law of forum non conveniensthe plaintiff can be non suited. I, therefore, decide issue No.1 infavour of the plaintiff and against the defendants."*

47. This Court, in the case of Deepak Kumar v. Hindustan Media Ventrues Ltd.18, held that it is settled law that defamation takes place because a defamatory statement or article or any other material is published i.e. it comes to the knowledge of the public and the appellant/plaintiff is brought down in the estimation of the right-thinking people of the society. It was further held that publication is a sine qua non with respect to defamatory articles because defamation is only caused when the general public learns about them.

48. Thus, it is crystal clear that publication is an essential requirement for the culmination of defamation."

59. The third essential is identifiability. The defamatory statement must refer to the plaintiff expressly or by necessary implication, such that an ordinary, reasonable person acquainted with the plaintiff would understand that the statement pertains to them. The aforenoted essential aligns with the maxim *certum est quod certum redid potest,* i.e., that is certain which can be made certain. It is not necessary that the plaintiff be named; if the description is such that those hearing or reading it can reasonably infer the plaintiff's identity, the requirement is satisfied.

60. Furthermore, the fourth essential element of civil defamation is the absence of a valid legal defence at the time of publication. For a defamatory statement to be actionable, it must not be protected by any recognized defence under law. Among the well-established defences, justification of truth is one which allows the defendant to escape liability by proving that the impugned statement is substantially true. Another defence is fair comment or honest opinion, which applies when the statement pertains to a matter of public interest and is based on true or provably factual premises, even if the opinion itself is critical or severe. Privilege also operates as a bar to liability. Absolute privilege applies in certain protected contexts such as judicial, parliamentary, or *quasi*-judicial proceedings, while qualified privilege covers communications made in good faith pursuant to a legal, moral, or social duty. Additionally, statutory protections or express or implied consent of the plaintiff may also defeat a claim. Where any of these defences are successfully invoked, the defamatory nature of the statement is neutralised in the eyes of the law.

61. In light of the foregoing discussion, a detailed examination of the facts of the present case, tested on the anvil of the essential constituents of civil defamation, is both apposite and warranted.

Whether the purportedly defamatory remarks are false and defamatory, and is there an absence of a valid defence?

62. The Court has meticulously examined the material available on record to determine whether the impugned statements contained in the termination letter, specifically, the references to "*malicious conduct*" and "*loss of trust*", can withstand scrutiny either as true factual assertions or as statements shielded by a valid defence.

63. It is noted that the defendant seeks to justify the impugned remarks in the termination letter on the ground that they constitute factual assertions necessitated by the plaintiff's conduct, particularly his repeated correspondence with various internal and external entities. It is the case of the defendant that the expression "*malicious conduct*" and the assertion of "*loss of trust*" were merely reflective of circumstances that compelled the defendant to articulate its position formally. Further, it is avered that there was no publication of the termination letter beyond the plaintiff himself, a fact that stands admitted during cross-examination. It is also averred by the defendant that the plaintiff unequivocally conceded that "*the management of the defendant company did not send information of this fact to any person or entity other than me*." According to the defendant, while it may be inferred that certain employees were aware of the termination of the plaintiff, there is no evidence suggesting that they were privy to the impugned contents of the letter. Based on this, the defendant submits that the

essential element of *publication*, indispensable to a claim of defamation, is conspicuously absent.

64. *Per Contra*, the plaintiff has placed on record a series of contemporaneous performance evaluations that stand in stark contrast to the allegations made in the termination letter. These include the Archived Annual Appraisal for 2018–2019 exhibited as Ex. DW-1/P1, the Wipro Leaders' Qualities Survey 2018–2019 exhibited as Ex. DW-1/P2, and the Performance Appraisal for Q3 2019–2020 from the myCareer portal exhibited as Ex. DW-1/P3. Though these documents were objected to by learned counsel for the defendant, DW-1 did not categorically deny their contents. On the contrary, DW-1 repeatedly stated that he would need to "verify" the documents but did not challenge their substantive contents. Notably, these records uniformly reflect the feedback on the high degree of performance of the plaintiff, him being rated as making a "Highly Valued Contribution" and receiving positive feedback from both peers and managerial personnel.

65. Moreover, DW-1 categorically conceded in response to pointed questions that none of the said documents describe the plaintiff as a "*poor performer*" or attribute any "*malicious conduct*" to him. To the contrary, the Ex. DW-1/P3 includes language such as "*Good work overall*" and "*Abhijit has done well overall this quarter*," with no reference whatsoever to misconduct or breach of trust. The express language of these performance reviews militates against the adverse characterizations later inserted into the termination letter. In the absence of any contrary documentation or inquiry report, the claims of the

defendants remain unsubstantiated. If the conduct of the plaintiff indeed qualified for such imputations, there ought to have been some contemporaneous record to support the same, akin to the available record which suggests otherwise.

66. The case of the plaintiff is further strengthened by the testimony of DW-1, who admitted the importance of relieving letters in employment background checks. To highlight the adverse impact of such communications, the plaintiff placed on record documents marked as Mark A and Mark B. Though not formally exhibited and without evidentiary value, these documents demonstrate the practical consequences that termination or relieving letters can have on an individual's career and reputation. Even otherwise, without formal proof, it is a matter of common knowledge and understanding of human affairs in the ordinary course.

67. The plaintiff has also relied upon the decisions of this Court in ***Himanshu Bhatt*** and ***S.P. Sharma,*** wherein the Court held that termination letters containing adverse remarks about the conduct or performance of the employee are stigmatic and inherently defamatory. In ***S.P. Sharma,*** the Division Bench of this Court held that a termination order referring to "lapses committed" in a specific project amounted to a finding of negligence, thereby carrying a clear stigma against the petitioner therein. The Court reiterated that where an order of termination attributes specific blame or fault, it cannot be defended as an administrative or performance-based action. The Court reiterated,

relying on ***Hindustan Steels Ltd. v. A.K. Roy***, [29] and ***Drummond-Jackson,*** that termination orders impacting professional reputation fall squarely within the domain of penal consequences and are capable of being defamatory. The relevant extract of the aforementioned decision is reproduced herein:-

> *10. An imputation which disparages a person in his profession, calling, trade or business is bound to be stigmatic, and therefore any imputation which is disparaging in the way of a person's occupation would be stigmatic.*
>
> *11. The test whether an imputation against a person is disparaging/stigmatic would be : whether the words used tend to lower the person in the estimation of right thinking members of the society. In the context of defamation/liable in the decision reported as (1970) 1 ALLER 1094 Drummond-Jackson v. British Medical Association, imputation of incompetence in the conduct of one's business was held capable of being defamatory even though such an imputation does no expose such a person to hatred, ridicule or contempt or cause others to shun or avoid him.*
>
> *12. Tested on the anvil of the legal norms and principles aforenoted, an imputation against a person in a letter of termination of service that the reason for service being terminated is the lapses committed by the person, would mean that in his occupation, the person is labelled as a negligent person while discharging duties for the reason a lapse is an act of omission and could be either deliberate or negligent. Such a person would obviously face the penal consequence of not being able to get a job for the reason the prospective future employer would like to know the reason for cessation of a past service. If informed that it was on account of the allegation of being negligent in discharge of duties and the language used is that the service is being terminated owing to the lapses committed, the consequences would be adverse against the employee."*

68. Upon careful consideration of the aforesaid, the Court finds that the defendant has failed to bring on record any documentary evidence, such as warnings, disciplinary findings, or inquiry reports, to support the

[29] (1969) 3 SCC 513

grave allegations made in Ex. P-2. The absence of such records weakens the case of the defendant as mere allegations in the written statement and evidence affidavit, unsubstantiated by relevant evidence placed on record, are in the teeth of the defence of the defendant.

69. Distinguishably, on a plain reading of the record, it is evident that the plaintiff has successfully shown a clear mismatch between the remarks in the termination letter and the consistent positive feedback reflected in various official documents. These include internal emails, performance appraisals, and assessments, all of which describe him as a competent and professional individual. The allegations in the termination letter, which suggest malicious conduct or poor performance, are not supported by any of these records. On the contrary, they stand in direct conflict with the documented track record of the professional conduct of the plaintiff. The unwarranted allegations, resting on no substantiated basis, have undoubtedly cast a long shadow over the professional standing of the plaintiff. Further, the terms used in the termination letter, without any material basis, have the effect of clouding the professional commitment, ethics, and competence of the petitioner in the eyes of others, especially potential employers.

70. Accordingly, it is found that the statements in question are demonstrably false and defamatory in nature. Further, no valid defence has been established by the defendant, as the truth of the statements has not been proven, and the statements were not justified or made in good faith with due care. The threshold for falsity and absence of valid defence stands fulfilled.

Whether the defamatory remarks are identifiably referring to the plaintiff?

71. Applying the aforementioned legal principles to the facts of the present case, it emerges unequivocally that the third requisite for sustaining the cause of action in defamation stands duly fulfilled. At the very threshold, there exists no ambiguity or contestation with respect to the identification of the plaintiff as the person alluded to in the impugned termination letter. The verbiage employed therein undoubtedly refers to the plaintiff as the termination letter was issued in the name of the plaintiff, thereby satisfying the requirement of a specific and discernible reference essential for the sustenance of a defamation claim.

Whether the defendant published the defamatory remarks?

72. It is now incumbent to consider the indispensable requirement of publication in a civil defamation claim, which extends beyond mere overt dissemination and encompasses any conduct, deliberate or negligent, by which a defamatory statement is brought to the awareness of a third party.

73. The foundation of the *sine qua non* nature of publication in proving defamation lies in the core principle of the tort of defamation, i.e., to preserve the reputation of a person from unjustified degradation in the eyes of others. Building on that foundation, the act of publication serves as the conduit through which reputational harm is transmitted to a third party, without which the alleged defamation remains a private grievance. It is the communication of the defamatory imputation to

someone other than the claimant that transforms a mere assertion into a legally actionable wrong. In essence, publication breathes juridical life into the tort, giving rise to the very harm the law seeks to prevent.

74. The act of publication need not assume the form of express transmission; it is sufficient if the person who has made the ostensibly defamatory remarks, by act or omission, causes the defamatory material to be read, seen, or heard by any person other than the person against whom such remarks are made.

75. A reference may be made to the decision in ***Mahendra Ram v. Harnandan Prasad***[30], wherein the Patna High Court examined the doctrine of publication in the law of defamation and delineated its contours in the context of foreseeability. The plaintiff therein, unfamiliar with Urdu, alleged that defamatory content in a letter written in Urdu by the defendant therein became publicly known when he had to rely on a third party to read the letter aloud. The Court, however, emphasized that mere access of the content by a third party does not *ipso facto* constitute publication in law. Relying on the exposition in *Clark and Lindsell on Torts*, the Court held that the writer of a letter is not liable for publication unless it is established that he knew, or in the ordinary course of circumstances ought to have known, that the contents would be read by someone other than the addressee. The absence of such knowledge, actual or constructive, severs the causal chain necessary to impute liability. The relevant extract of the decision read as under:-

[30] AIR 1958 Pat 445

> *4. The law is succinctly stated in Clark and Lindsell on Torts (11th Edition) paragraph 1267 at page 759, which runs as follows:"When a letter is addressed to a particular person the writer is not as a general rule responsible except for a publication to that person. If it were stolen and published by the thief the writer would not be liable. But if the sender knows or ought to know that the letter will probably be read by some person other than the addressee, as for instance a clerk in the latter's service, he will be responsible in the event of its being so read. If he wants to protect himself he should write 'private' on the envelope.""If, however, the defendant has no knowledge of the possibility of such a publication he is not liable if it should take place. Thus, where a libellous letter was addressed to the plaintiff at his office and in his absence was opened by his partner, it was held that the defendant was not liable for the publication, the jury having found that he did not know such a thing was possible. And where the libel was sent in an unsealed envelope and the plaintiffs butler read it out of curiosity,it was held that there was no evidence of publication by the defendant, for there was no evidence that he knew of the likelihood of his letter being opened by the butler or any one else but the plaintiff."*

76. In rejecting the claim of publication, the Patna High Court discussed the English authorities of *Duke of Brunswick v. Harmer* [31] and *Sharp v. Skues* [32]. In the *Duke of Brunswick*, the libel therein was republished nearly two decades later when an agent, acting at the behest of the plaintiff, procured a copy of the defamatory newspaper. The Court, nevertheless, held that delivery of a defamatory document to a third person, even if acting on the plaintiff's instructions, amounted to publication, since the reputational harm could still arise in the mind of the agent.

77. Conversely, in *Sharp v. Skues*, the Court of Appeal of England declined to impose liability for publication where a letter addressed to the plaintiff was opened by the partner of the plaintiff therein, during the

[31] (1850) 14 QB 185
[32] (1909) 25 TLR 336

plaintiff's absence. The determinative factor therein was the finding that the defendant neither intended nor could have foreseen the letter being opened by anyone other than the plaintiff. It was only where such foreseeability or intent was demonstrable that the threshold of publication could be crossed.

78. Distinguishing the finding rendered by the English Court in *Duke of Brunswick* and aligning with findings in *Sharp v. Skues*, the Patna High Court found that the plaintiff had failed to plead or prove that the defendant knew of the plaintiff's inability to read Urdu or had acted in any manner that rendered third-party's reading of the letter a foreseeable consequence. The letter had been sent to the plaintiff's residence, without any indication or evidence that the defendant anticipated or should have anticipated its interpretation by another. The Court held that the voluntary act of the plaintiff therein, seeking assistance to read the letter, absent any culpable knowledge or intention on the part of the defendant therein, was insufficient to satisfy the requirement of publication.

79. Making a case for the application of the doctrine of foreseeability in cases similar to one at hand, reference can also be made to the decision of the English Courts in ***Theaker v. Richardson***[33]. The English Court of Appeal upheld the liability for publication where the defamatory letter, placed in a plain envelope resembling routine material, was opened by someone other than the plaintiff therein. The

[33] (1962) 1 WLR 151

foreseeability of such access was imputed to the defendant therein, and publication was deemed established.

80. More importantly, American jurisprudence has, of late, undertaken a rigorous refinement of the principles of liability in defamation doctrine by embracing and incorporating the doctrine of compelled self-publication as a logical emanation of the foreseeability principle. Under this modern but stern approach, an originator's liability does not cease with the initial utterance of a defamatory imputation but endures whenever that imputation predictably forces the injured party to disclose it to prospective recipients. Emanating from the bedrock of the foreseeability principle, the doctrine of compelled self-publication holds that any originator whose conduct predictably forces another to disclose defamatory matter must answer for its spread. Accordingly, an employer who, by internal mandate or statutory compulsion, obliges a former employee to reveal the reason for termination cannot exonerate itself from liability for every foreseeable instance of that compelled disclosure and the reputational injury it occasions.

81. The Minnesota Supreme Court in ***Lewis v. Equitable Life Assurance Society*** [34] articulated the doctrine of compelled self-publication, holding that where an employee is compelled to disclose the defamatory reason for termination in a job search, the employer cannot claim absence of publication. The Court rejected the notion that the plaintiff could be expected to conceal or falsify the termination reason.

[34] 389 N.W.2d 876 (1986)

82. Supporting authorities also emerge from the decisions in ***Hedgepeth v. Coleman***[35] and ***Colonial Stores Inc. v. Barrett***[36], wherein Courts held that republication, when reasonably foreseeable due to statutory or circumstantial compulsion, may be imputed to the originator. In ***Colonial Stores***, the employer remained liable where the employee was required to present the defamatory certificate of separation to future employers.

83. Similarly, in ***McKinney v. County of Santa Clara***, [37] the California Court of Appeal found that foreseeable disclosure by a terminated employee to potential employers sufficed to establish publication.

84. Furthermore, it can also be noted that the liability for publication in civil defamation cases, does not depend only upon the presence of malice or intent to harm; rather, it is premised on the role of the originator in triggering a foreseeable chain of events that results in the dissemination of defamatory material. As such, the tort of defamation is akin to other civil wrongs predicated upon causative responsibility. It is enough to establish that an act or omission caused the defamatory statement to be read by someone other than the plaintiff, either due to compulsive self-disclosure of the defamed person or forseeable disclosure.

[35] 183 N.C. 309
[36] 73 Ga. App. 839
[37]110 Cal. App. 3d 787 (1980),

85. In case involving employer-employee libel, the fulcrum of judicial scrutiny, therefore, rests upon a dual inquiry: (i) did the defendant have actual knowledge that third-party access was probable; or (ii) would a reasonable person, similarly circumstanced, have anticipated or foreseen that such access would occur.

86. In conclusion, the doctrine of compelled self-publication, though an exception to traditional principles, represents a reasoned and equitable development in defamation law. It ensures that employers cannot evade liability by using confidential correspondence as a shield when, in substance, their actions set in motion the very harm the law seeks to redress. The traditional concept of publication, by way of an explicit act, does not find any application to confidential communications between employers and employees. However, without being so, the employee may end up facing serious reputational stigma owing to an expression of the employer, even if the expression was not communicated explicitly to any third person. The underlying prerequisite is that the employer ought to have foreseen the possibility of disclosure of confidential communication to any third person or the self-compulsion of the employee to disclose the same to any third person, such as for seeking subsequent employment. Ultimately, the underlying intent of the law is to protect the reputation of a person in the eyes of others, and as long as the originator of a defamatory expression could reasonably be linked with the acquisition of knowledge of such expression by some third person, the law must respond.

87. Although in the present case, there is no question of publication *via* digital media platforms, it is apposite to observe that in the contemporary landscape of instantaneous digital communication, the principles underpinning the doctrine of foreseeability of publication assume heightened relevance. The ease and rapidity with which information can be disseminated in the digital age necessitate a more nuanced application of this doctrine, particularly in cases where reputational harm may be reasonably anticipated as a natural consequence of documented communications. When a defendant elects to transmit content through social media, the foreseeability of access by multiple third parties is not merely probable but inevitable.

88. The viral nature of social media further compounds this foreseeability. The originator, by utilising such a public or *quasi*-public forum, is deemed to have constructively accepted the consequential risk of widespread circulation. Hence, any claim of ignorance or denial of publication is untenable in law, as the forum chosen by the defendant militates against a finding of private, restricted communication. The reputational harm emanating from such platforms flows directly from the communicative choice of the defendant.

89. Moreover, even in instances where the defamatory statement is repeated by the plaintiff, for example when responding to employment inquiries or during job interviews, the originator's liability does not stand extinguished. Under the doctrine of compelled self-publication, Courts recognise that such disclosure, though technically by the plaintiff, is a foreseeable consequence of the original act. When the

plaintiff has no meaningful choice but to disclose the defamatory rationale to prospective employers, the chain of causation remains unbroken. The foreseeability of such compelled republication imposes continuing responsibility upon the defendant, especially where the employment ecosystem necessitates full transparency during background verification processes.

90. The overarching legal position that, therefore, emerges is that the requirement of publication in defamation encompasses not only direct dissemination to third parties but also indirect transmission arising from foreseeable consequences. The law eschews a narrow, formalistic view of communication in favour of a pragmatic and substance-oriented approach. The inquiry is not centered on the subjective intent of the defendant but on whether, in the circumstances, a reasonable person in the defendant's position would have foreseen the likelihood of third-party access. As noted above, in such determination of the element of forseeability, various factors are to be kept in consideration which include, but are not limited to, the mode of communication, choice of medium of dissemination, inevitability of third party access –owing to the choice of medium or nature of content, element of self-compelled disclosure, etc.

91. Turning to the facts of the present case, the defendant has raised an objection that the termination letter, marked as Ex P-2, was addressed and delivered solely to the plaintiff and therefore cannot be said to have been published. Further, it has also been alleged that it is the plaintiff

who has made the remarks of the termination letter known to third parties on his own volition.

92. However, this contention is untenable in view of the doctrine of compelled self-publication, which is attracted in the present case owing to the respective positions of the parties and their relationship *inter se*. The Court takes due note of the language employed in the impugned letter, particularly the assertions referring to "*malicious conduct*", which, by their very nature, were bound to surface in the course of future employment. It was a matter of common knowledge and ordinary prudence that in matters such as job applications, background verification, or reference checks, the plaintiff would be left with no alternative but to disclose the impugned termination letter to prospective employers. The defendant, being an employer itself, was, in all probability, aware of the fact that prospective employers would want to enquire about the antecedents of the plaintiff. Such disclosure, being a foreseeable and natural consequence of incorporating the defamatory remarks in the impugned termination letter, renders the act actionable in law.

93. The Court, therefore, finds that the plea raised by the defendant regarding the absence of publication is unsustainable. The foreseeable circulation of theimougned termination letter, through compelled disclosure by the plaintiff, satisfies the requirement of publication and thereby fulfils the second essential element required to constitute defamation.

94. At this juncture, it is apposite to observe that in the facts of the present case, the impugned termination letter issued by the defendant did not merely effectuate the cessation of the employment relationship, but was couched in a language intended to tarnish the plaintiff's reputation and to impair his ability to pursue re-employment with dignity. Although Clause 10 of the employment contract permitted termination *simpliciter*, the impugned termination letter surpasses that framework and is replete with stigma and insinuations likely to accompany the plaintiff into future professional settings. The tenor of the communication reveals a discernible intent to carry out a form of character assassination under the semblance of administrative formality, thereby compounding the damage to the plaintiff's reputation and standing. Notably, the defendant has failed to place on record any credible evidence, either testimonial or documentary, to establish that the reputational harm suffered by the plaintiff was predicated on any demonstrable act of misconduct. In the absence of a plea of truth or any attempt to substantiate the impugned remarks, the allegations remain entirely uncorroborated. To allow such unsubstantiated imputations to subsist would result in a continuing injustice, undermining the professional integrity of the plaintiff and frustrating the dignity attached to the pursuit of gainful employment.

95. The Court is further of the opinion that such injury, being devoid of factual support and yet carrying grave implications for the plaintiff's future employability and professional standing, warrants the intervention of this Court by way of appropriate and equitable relief. In

the absence of any valid defence or evidentiary justification offered by the defendant, the plaintiff is entitled to the protection of his reputation. The law cannot allow reputational harm, born of unsupported accusations, to continue unabated where such harm significantly impacts an individual's career and prospects. Relief must, therefore, be tailored to redress the wrongful infliction of reputational injury and to vindicate the plaintiff's right to dignity in the sphere of employment.

96. Having held that the remarks made in the impugned termination letter are defamatory and fulfil all essentials to constitute the tort of defamation, the question now comes to the ascertainment of damages.

97. In the Indian legal system, the award of damages for defamation, while recognised as a means of vindicating the reputation of the aggrieved, remains largely compensatory and under- developed in comparison to international jurisprudence. Unlike in England or America, where substantial jury awards serve both compensatory and deterrent functions through exemplary or aggravated damages over and above the general compensation, Indian courts approach the question of damages with caution. Reference can be made to the decision of this Court in ***Ram Jethmalani v. Subramaniam Swamy***[38]. Moreover, a distinction needs to be drawn between public law or constitutional violations by public authorities and purely private wrongs such as defamation, insofar as the question of damages is concerned. Whereas, the Supreme Court has ordered exemplary damages in constitutional

[38]AIR 2006 DELHI 300

violations at the hands of public authorities, we are yet to find a similar authoritative approach in cases involving loss of reputation.

98. The law, ordinarily speaking, does not favour punitive or exemplary damages in routine defamation claims, and instead focuses on providing reasonable compensation for the loss of reputation, mental anguish, and emotional suffering. However, the absence of a defined formula for quantifying injury to honour or repute renders such awards inherently discretionary based on the facts and gravity of the defamation, in each and every case. The very idea of quantification of reputational loss in terms of money makes the task of judicial determination challenging. It is also attributable to the fact that there is no real equivalence between the loss of reputation and monetary loss, except in cases wherein reputational loss has been suffered by a corporate entity leading to actual loss of income/business, or in cases where monetary loss could be linked directly to the loss of repute. However, such cases are not common, especially where an individual suffers the injury. Across common law jurisdictions, it has been acknowledged that damages for libel or slander are to be quantified "at large," i.e., without reference to any particular loss or damage. The calculation of compensation on this principle takes into account a myriad set of circumstances, including, but not limited to, the conduct of the parties, circumstances of the case, gravity of the libel, extent of publication, w*hether to a few or to public at large*, refusal to accept mistake or apology, effect of the libel on personal integrity, professional honour, honesty and loyalty of the defamed person etc. In addition, the

Court may also keep in mind the consequential effect of the loss of reputation on future prospects and social standing, to the extent it could be considered objectively and reasonably. Having said that, the Court must be mindful that the award of damages or compensation on account of reputational loss is not a means to unjustly enrich a plaintiff and thus, the computation must restrict itself to the overall impact of the reputational harm on the mind and life of the defamed person, insofar as it could be inferred from the circumstances on record.

99. A useful reference in this regard may be made to the seminal authority in ***John v MGN Ltd***.[39,] which has been followed and quoted with approval by the Division Bench of this Court in ***Hindustan Unilever Limited v. Reckitt Benckiser India Limited***[40]. In John, the Court of Appeal held that:

> *"The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered.* ***That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people.*** *A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what*

[39][1997] QB 586
[40]2014: DHC: 620-DB

> *was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff"s feelings by the defendant"s conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way."*
>
> *(emphasis supplied)*

100. No doubt, in principle, the possibility of exemplary or aggravated damages has also been explored by the Courts in cases of libel or slander, particularly in corporate defamation. It has been done on the anvil of five principles for awarding exemplary damages, as laid down in the decision of the ***House of Lords in Cassell & Co. Ltd. v. Broome***[41].

101. However, no case for awarding exemplary damages is made out by the plaintiff in the present case, and thus, the analysis of the said principles in the present set of facts is unwarranted. The damages in the instant case are to be quantified at large, in light of the principles for awarding general compensation. Moreover, the damage suffered on account of termination has already been computed and paid in terms of the salary payable during the notice period. Pertinently, general compensatory damages in defamation serve a tripartite function: they console the plaintiff for the emotional distress suffered, repair the damage to personal and professional reputation, and vindicate the injured person's standing in society. As acknowledged in foreign and comparative jurisprudence, the most serious defamations are those that undermine core attributes of a character, *inter alia*, honesty, integrity,

[41]1972 AC 1027

and moral fibre. In such cases, actual pecuniary loss may be difficult or even impossible to prove. Nevertheless, the psychological and social harm is insidious, persistent, and often merits a substantial award. It would also be apposite to note that damage is implicit in a case involving loss of reputation. An assault on the reputation of a person is per se actionable, and it is presumed to have caused damage to the sufferer. Thus, general compensation is warranted.

102. In view of the foregoing findings, this Court is of the considered opinion that the impugned termination letter, replete with stigmatic language and bereft of any foundation, constitutes actionable defamation. The remarks therein, couched in the use of the term *"malicious conduct"*, not only lack substantiation but also have a direct and deleterious impact on the future employability and professional dignity of the plaintiff. Given the compelling factual matrix and the absence of any legitimate defence advanced by the defendant, the tortious injury suffered by the plaintiff warrants an intervention.

103. Accordingly, this Court deems it just and proper to award a sum of Rs. 2,00,000/- as general compensatory damages to the plaintiff, to redress the reputational harm, emotional hardship, and loss of professional credibility occasioned by the conduct of the defendant.

104. Furthermore, in the considered view of this Court, the ends of justice would be ill-served if the defamatory remarks contained in the termination letter were permitted to remain on record, thereby continuing to impair the professional prospects of the plaintiff and his dignity. Therefore, in furtherance of the principles of equity and with a

view to effectuating complete restitution, the Court hereby directs that the remarks with respect to the professional character of the plaintiff be expunged. Further, a fresh termination letter shall be issued to the plaintiff devoid of any defamatory content, and consequently, the impugned termination letter shall cease to be of any effect insofar as the defamatory content is concerned.

105. Needless to observe, the issuance of a fresh letter and expungement of remarks shall not alter the decision of termination of the petitioner in any manner whatsoever.

Relief

106. In view of the aforesaid directions, the instant suit stands partly decreed in terms of issue No.2.

107. Accordingly, the Registry shall draw a decree sheet. Parties to bear their own costs.

PURUSHAINDRA KUMAR KAURAV, J

JULY 14, 2025/p