

DR. ANIL BAJAJ

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v.

POST GRADUATE INSTITUTE OF MEDICAL EDUCATION
AND RESEARCH AND ANR.

JANUARY 21, 2002

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[B.N. KIRPAL, K.G. BALAKRISHNAN AND ARIJIT PASAYAT, JJ.]

Service Law :

Lien—Employee of Post Graduate Institute of Medical Education and Research—Granted permission to proceed for employment abroad—Guidelines required an undertaking by the employee that he will resume duty within a period of two years—Office order according sanction states that in case appellant fails to resume duty his lien would automatically expire and he would be deemed to have permanently left the Institute—Employee not resuming duty as undertaken by him—His request for extension was rejected—Writ petition by employee challenging his termination dismissed by High Court—Held, the principle of estoppel would apply to the case—A person who gets an advantage under a condition cannot turn around and challenge the said condition—High Court was right in dismissing the writ petition—Estoppel.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 608 of 2001.

From the Judgment and Order dated 23.9.99 of the Punjab and Haryana High Court in C.W.P. No. 13570 of 1999).

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R.L. Batta, S.K. Puri, Ujjwal Banerjee, Ms. Anindita Gupta and H.K. Puri for the Appellant.

D.S. Nehra, Ms. Shobha, Dhruv Mehta, Ms. Anu Mehta and S.K. Mehta, for M/s. K.L. Mehta & Co. for the Respondents.

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The following Order of the Court was delivered :

Special leave granted.

After hearing the counsel for the parties, we are of the opinion that no

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- A relief can be granted to the appellant. It is quite evident that as per the guidelines the petitioner was allowed to proceed for employment abroad. The guidelines required an undertaking to be furnished to the effect that he will resume duty within a period of two years. It is stated by the learned senior counsel for the appellant that no such undertaking was furnished. Be that as it may, there is an order dated 13th January, 1995, on the record, which grants sanction to the appellant to take up the assignment in Oman. This appears to be an ex-post facto sanction as the appellant had proceeded for a period of two years with effect from 27th September, 1994. Para 2 of this office order according sanction states that in case the appellant fails to resume duty at Chandigarh his lien will automatically expire and he shall be deemed to have permanently left the institute from the original date.

- It is an admitted fact that the appellant did not come back till after 1998. It is also an admitted fact that his request for extension was rejected specifically in 1997. This being the position the principle of estoppel, apart from anything else, would clearly be applicable in a case like this. A person who gets an advantage, namely, of a sanction to go abroad on service on the condition that he will come back within two years and if he does not come back, his lien will automatically be regarded as being terminated he then cannot turn around and challenge the said condition on the basis of which sanction to go abroad was granted. Of course, if there is a dispute with regard to the question whether he had in fact come back within the stipulated period or an extension had been specifically granted an inquiry may be necessary but where the facts are not in dispute the inquiry would be an empty formality. In any case principle of estoppel would clearly apply and the High Court was right in dismissing the writ petition filed by the appellant wherein he had challenged his termination.

- The appeal is, accordingly, dismissed.

R.P.

Appeal dismissed.