

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.7.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Writ Petition No.1802 of 2015 & M.P.No.1 of 2015

1.The Chairman-cum-Managing
Director, BSNL, Bharat Sanchar
Bhavan, Harish Chandra Mathur
Lane, Janpath, New Delhi-110001.

2.The Chief General Manager, BSNL
Chennai Telephones, No.78,
Purasaiwakkam High Road,
Chennai-10.

3.The Additional General Manager
(HR & A), BSNL, Chennai Telephones,
No.89, Millers Road, Chennai-10.

... Petitioners

Vs

1.P.Sreeram

2.The Chennai Administrative Tribunal,
Chennai Bench, rep.by its Registrar,
High Court Campus, Chennai-104.

... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the order dated 2.9.2014 passed by the second respondent in O.A.No.850 of 2013 and quash the same.

For Petitioners : Mr.Manoj Sreevalsan

For Respondent-1 : Mr.R.Rajeshkumar

ORDER OF THE COURT WAS MADE BY V.RAMASUBRAMANIAN, J

The management of BSNL has come up with the above writ petition challenging an order passed by the Central Administrative Tribunal.

2. Heard Mr. Manoj Sreevalsan, learned counsel for the petitioners and Mr. R. Rajeshkumar, learned counsel appearing for the first respondent.

3. The first respondent was provisionally selected for appointment as Junior Telecom Officer, on 25.11.2008. He was called upon to execute a bond, which he did it on 29.11.2008. As per the bond, the first respondent was obliged to serve BSNL for a period of five years, failing which, he was obliged to pay damages to the extent of Rs.85,000/-.

4. After completion of training for about 8 months, the first respondent was absorbed as Junior Telecom Officer on 22.6.2009. On 15.6.2011, the first respondent made a request for the grant of extraordinary leave for two years, to pursue higher studies. The Department gave permission on 7.7.2011 to the first respondent to pursue a M.Tech course in Communication at the I.I.T., Varanasi, which was previously Banaras Hindu University. But, such an extraordinary leave was granted on condition that the first respondent shall execute a fresh bond for serving the organisation for a period of three years after completion of the post graduate course. Upon failure of the first respondent to comply with the condition, he was made obliged to pay a sum of Rs.7,20,000/-, which was calculated obviously at the rate of Rs.30,000/- per month for a period of 24 months, for which, he was granted extraordinary leave.

5. While pursuing his post graduate course, the first respondent submitted a resignation letter on 1.9.2012. But, it was not accepted. Therefore, the first respondent filed an application in O.A.No.850 of 2013 on the file of the Central Administrative Tribunal, seeking a direction to the writ petitioners herein to relieve him without insisting upon the payment of the amount under the second bond. This application was partly allowed by the Tribunal by an order dated 2.9.2014. By this order, the Tribunal set aside the original impugned order and directed the writ petitioners to refund an amount of Rs.7,15,000/- after deducting the original bond amount of Rs.85,000/- from the amount of Rs.8 lakhs deposited by the first respondent, pursuant to an interim order of the Tribunal passed on 9.7.2013. As against the said order, the Department has come up with the above writ petition. 6. Admittedly, the first bond that the first respondent executed with the Department on 29.11.2008 was to serve the Department for a period of five years, failing which, to pay an amount of Rs.85,000/-. If the first respondent had committed a breach of this bond, he would have been obliged only to pay Rs.85,000/-.

6. Admittedly, the first bond that the first respondent executed with the Department on 29.11.2008 was to serve the Department for a period of five years, failing which, to pay an amount of Rs.85,000/-. If the first respondent had committed a breach of this bond, he would have been obliged only to pay Rs.85,000/-.

7. But instead of committing breach of the original bond, the first respondent only applied for extraordinary leave, after serving the Department for two years on regular basis. For the grant of an extraordinary leave, the petitioners imposed a condition that another bond should be executed. Accordingly, a fresh bond was executed on 7.7.2011 whereby the petitioners imposed a condition for payment of Rs.7,20,000/-. Such a condition, as rightly held by the Tribunal, was only a clause in terrorem and it cannot be traced to any benefit conferred by the Department upon the first respondent.

8. Two things strike at the very root of the aforesaid condition. The first is that by a subsequent event, the petitioners cannot enlarge the original liability manifold. The petitioners have increased the original liability of the first respondent by ten times. This is not permissible. The second difficulty is that the petitioners have imposed a condition for the grant of extraordinary leave, which is much worse than a consequence that would have fallen upon the first respondent, if he had committed breach of the agreement. The Department cannot impose a condition, which will put the first respondent in a worse off situation merely for requesting extraordinary leave than the consequence that would have fallen upon him, if he had committed breach of the first agreement. Therefore, the Tribunal was right in rejecting the condition imposed under the second bond.

9. It is to be pointed out that the first respondent was absorbed on regular basis on 22.6.2009. Thereafter, he was governed by the leave rules that are applicable to the regular employees. The regular employees of the Department are entitled to extraordinary leave upto 24 months only as per the leave rules of the Department. These rules are in pari materia with Rule 32 of the CCS Leave Rules. Hence, what the first respondent actually sought was only what he is entitled as per the statutory rules, after having been absorbed on regular basis. For imposing an onerous condition such as one that the petitioners have done in this case, there was no sanction under the rules.

10. The learned counsel for the petitioners relies upon Section 72 of the Contract Act, 1872.

11. But, we are of the considered view that the said provision would not apply to cases of this nature. It is not the case of the Department that they paid any money to the first respondent during this period of 24 months, for which, he sought extraordinary leave. It is not even their case that any money was actually spent by the

Department due to the absence of the first respondent during this period. What the Department would have normally spent on the first respondent if he had not gone on leave, has actually been spent by them for extracting work from someone else. Therefore, the condition for payment of such a huge amount was only in the nature of a penalty and the Tribunal was right in disallowing the claim.

12. Accordingly, the writ petition is dismissed. No costs. Consequently, the above MP is also dismissed.

-Sd/-

Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

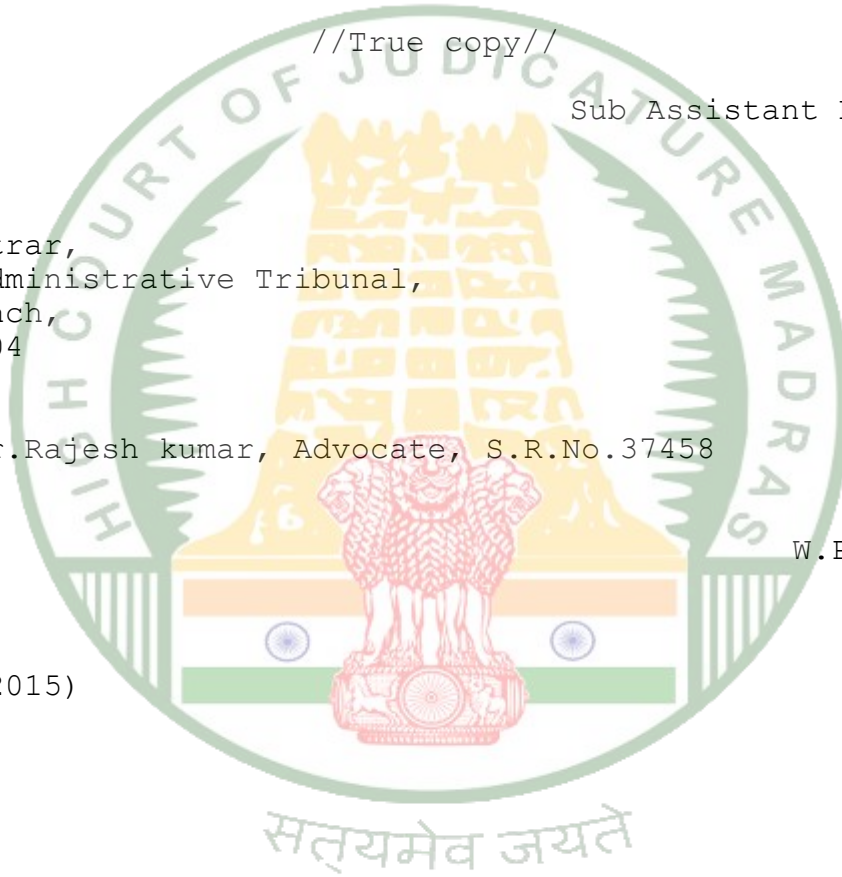
To

The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai 104

+1cc to Mr. Rajesh kumar, Advocate, S.R.No.37458

TS(CO)
CA(10/08/2015)

W.P.No.1802 of 2015
and
M.P.No.1 of 2015



WEB COPY