IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 01.03.2016

CWP No.14227 of 2013

Dr. Charanjit Singh Bahga ...Petitioner

Vs.

The Vice Chancellor, Punjab Agricultural University, Ludhiana, Punjab ...Respondents

CWP No.24526 of 2012

Dr. O.S.Parmar ...Petitioner

Vs.

The Vice Chancellor, Guru Angad Dev Veterinary Animal Science University (GADVASU), Ludhiana, Punjab ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.S. Chauhan, Advocate, for the petitioner(s).

Mr. M.L.Saggar, Senior Advocate, with
Mr. Gaurav Grover, Advocate, for respondents No.1 to 4.

Mr. H.N.S.Gill, Advocate, for respondents No.5 & 6.

RAJIV NARAIN RAINA, J.

1. This order will dispose of above cases bearing CWP Nos.14227 of 2013 & 24526 of 2012, as common questions of law and fact are involved in them, which can conveniently be decided by a common order. The facts are taken from CWP No.14227 of 2013 for the sake of convenience.

2. The petitioner retired in June, 2011 from the Punjab Agricultural University, Ludhiana. He was paid all his retiral benefits except gratuity in a sum of Rs.7.7 lacs and odd. The sin which the petitioner committed was that in all goodness he stood surety for his colleague namely Kiron Deep Singh [for short 'KDS'] by signing on a bond executed between his friend and the University, when he was granted study leave under Clause 21(3) of the Statutes of the University from October, 1990 to October 1993 to pursue a Ph.D. Programme as in-service candidate. The bond was a performance guarantee binding KDS to serve the University for not less than 5 years after completing the Ph.D. programme. However, KDS failed to complete his Ph.D. and his name was dropped from the Ph.D. programme. He rejoined University in May, 1994. KDS took casual leave and left for Singapore to join a Ph.D. programme in the University of Malaysia. There he was successful and was invested with a doctorate degree. When he returned from abroad, he discovered that meanwhile his services had been terminated by the employer for willful absence without permission. This was the end of the chapter of KDS as far as the petitioner was concerned. But he had stood surety on the bond executed between KDS and the University. Nothing was heard in the matter till after two decades in June, 2012, when the petitioner received out of the blue a memo directing the petitioner to deposit a sum of Rs.7.7 lacs and odd in the office of the University so that his withheld amount of gratuity could be adjusted and cleared. By then the petitioner had retired from respondent GADVASU where he was migrated from PAU by bifurcation of the two. He made a representation against execution of the bond from his pocket only for standing surety along with another colleague namely Dr. O.S.Parmar, the petitioner in connected CWP No.24526 of 2012. A similar amount has been claimed from Dr. Parmar by the University [GADVASU], which is a whopping amount in a

sum of Rs.15.5 lacs approximately which the university wants to recover from both the signatories of the bond, shared half and half. In the present twin petitions, we are concerned with the alleged liability fastened on the petitioner(s) alone to which interest element is a part.

3. The petitioner pleads that the liability cannot be fastened on him in execution of the personal bond. He is nowhere responsible for KDS's inability to complete the Ph.D. Programme or responsible for his flight to Malaysia to pursue his further studies in that country. He did not participate in any of the events involving KDS after he stood surety for him in utmost good faith. The petitioner pleads that he was neither informed of nor taken into confidence before or at the time KDS's services were terminated. He argues that on failure to complete the Ph.D. Programme on being refused readmission he was allowed to join duties at the Punjab Agricultural University, his employer. If the University took him back in service without any riders then the surety stands discharged from the bond. The petitioner cannot be held responsible to make good the loss if it can be called a monetary loss at all, since the amount is presumptive in nature with no real monetary damage or injury to the University.

4. Dr. Kiron Deep Singh executed the bond in the hope that he would complete his Ph.D. Programme while the University granted study leave in the hope that he would complete his Ph.D. Programme to serve the University for 5 years thereafter. The bond was contingent. The contingency did not happen for which the petitioner cannot be blamed or held responsible in any manner whatsoever to take the brunt or share it with Parmar.

5. After a passage of twenty two years, he has been rudely woken up and made a scapegoat for the inefficiencies of the University to recover the amount, if any realistically, from KDS before the University comes down on

the petitioner to claim the money. It is rather queer when the petitioner points out to the pleadings in the petition that a sum of Rs.1.2 lacs and odd was lying in the GPF account of KDS and still remains with the University which in *arguendo* has not been deducted from the amount even if the petitioner's liability is upheld. This shows not only lack of application of mind but acting with insidious intent against the petitioner. It has been pleaded in para.16 of the petition that KDS litigated against the termination order and presently his case rests in pending RSA No.4650 of 2004 before this court. If the appeal is pending its outcome cannot be predicted and depending on the final result, the University can always seek measures against KDS in that litigation and recover amount, if any, holding KDS accountable. Thus, it is alternatively argued that the recovery of amount from the petitioners at this stage is wholly illegal.

6. The University has filed a reply through its Registrar and has contested the case raising preliminary objections. The University says that a finding of fact regarding recovery is involved in the present case, therefore, interference is not called for which is a rather strange objection to take.

7. The issue involved requires no finding of fact to be recorded by this court. It is a purely legal issue as to whether a bond can be enforced against an innocent surety who is not in a direct contractual relationship with the University, but had acted in most abundant faith only to help out a colleague and perhaps friend at his behest to be guard against him not returning to the University equipped with Ph.D. degree to serve for 5 years and that too after 22 years to be visited with grievous injury to petitioner's pocket.

8. Initially, the cause of action accrued to the University against KDS when he was unsuccessful in pursuit of a Ph.D. degree and it took him back in service without enforcing bond against the principal debtor. It next accrued when KDS took flight to Malaysia and then again accrued when the

services of KDS were terminated without raising a little finger. The University did not bring action against KDS for recovery of money, but after twenty two years have awakened to claim the amount from the petitioner and Parmar. It may be noted that the bond was executed when the petitioner and KDS etc. worked with the Punjab Agricultural University. From a part of that University was born Guru Angad Dev Veterinary Animal Sciences University (GADVASU), Ludhiana and the petitioner retired from GADVASU. It is not the Punjab Agricultural University, but GADVASU that has issued notice of the impugned recovery on 27th June, 2012. It is disclosed in the reply that the amount of Rs.7.7 lacs and odd have been invested in a Fixed Deposit Receipt on 11th October, 2013, which has been re-invested in October, 2014 for an amount of Rs.9.19 lacs and odd. The last maturity date is October, 2015 and the amount is currently in deposit earning interest. This amount represents leave encashment and gratuity payable to the petitioner and withheld all these years.

9. Mr. M.L.Saggar, learned senior counsel confessed in Court that the amount has been invested in FDR by the University on his advice. It is not disputed that Dr. O.S.Parmar, petitioner in CWP No.24526 of 2012, retired from service in the year 2008 and received all his retiral benefits including pension, gratuity and leave encashment. In his first communication to GADVASU after receiving notice, the petitioner through his letter dated 20th October, 2011 requested the University to pay him full amount of pending dues and if the bond liability arises at a later stage, it may be shared between Dr. O.S.Parmar and him. This is being used as an admission and commitment of liability by the learned counsel for GADVASU. In another letter sent after about a month of the first addressed to GADVASU, the petitioner pleaded that interest should not be charged on the principal amount so far as KDS is

concerned since delay in payment of dues was not due to fault of sureties, but due to oversight of the Heads of the Department, who never bothered to recover the amount from KDS in spite of the requests made by the petitioner many a times to settle the case. It is urged that levying penal interest on bond liability by GADVASU amounts to double punishment. The liability is imaginary. The poor petitioner unaware of the legal position was writing to GADVASU requesting that penal interest on bond liability be waived off quite unaware that law would protect him and therefore, the court does not read these statements in letters exchanged as admission of liability, but rather as a plaintive call of a harassed man trying to retrieve or reduce substantial amounts of bond money as against his retirement dues to the tune of Rs.35 lacs which fell due on retirement.

10. It is shocking in Annexure R-5 that the surety with respect of Dr. O.S.Parmar was got deleted in 2003 while the case of the petitioner was not presented to competent authority along with case of Dr. O.S.Parmar subjected to the local audit. Dr. O.S.Parmar has got Scott free while the rope remains in the neck of the petitioner. This is unfair discrimination even assuming for a moment that the liability stands against the petitioner. With the deletion of surety of Dr. O.S.Parmar, the entire burden fell on the petitioner and therefore he requested in the alternative that the surety stood by Dr.Parmar may be restored so that liability can be equally shared, unmindful of the law which would protect him. The result of the work of the Committee set up by the University has ended in revival of liability of Dr.O.S.Parmar ordering that the entry in the service book of Dr. Parmar regarding surety is not to be treated as deleted.

11. On these facts, the liability of the petitioner under the study leave bond has to be determined.

12. Having heard learned counsel for the parties at considerable length, this Court is of the view that the liability cannot be fastened on the petitioner(s) under the bond signed by him in good faith to stand surety for a colleague on his failure to secure a doctorate. It goes without saying that the petitioner owes no responsibility nor is at fault in KDS remaining unsuccessful in pursuit of the Ph.D. degree from the University. He was not responsible for taking him back in service without proceeding to recover the amount from the principal debtor. Once KDS was permitted to join duty, the bond stood automatically discharged as against the petitioner(s). The statements in the correspondence/ letters were made in resignation to fate rather than on enforcement of rights without taking sage advice, remaining innocently ignorant of the repercussions and turns the case might take in the remote future. To save the petitioner, I would broadly apply the innovative principles laid down in **Lloyds Bank Ltd. Vs. Bundy, (1975) QB 326; (1974) 3 All ER 757** by Lord Denning to save Bundy from financial ruin. The petitioner like Bundy of the Yew Tree farm was not made aware of the consequences of his action, when he signed the bond. He signed it without independent advice while entering the contract, which bond may have been fair for the University, but was unfair for him, which has put him under duress brought to bear by the University after passage of two decades, the man knowing little to what to do till he came for protection to this Court. The petitioner could never have imagined or visualized on the day he signed the bond for a friend and colleague that the mess would be created for the failure of KDS keep to his word for which the petitioner cannot be held responsible in any way.

13. Even if the University wish to recover the amount from the principal claimed against the petitioner, the claim would be barred by time. The services of KDS were terminated in the year 1984 and no action was taken

to settle accounts with him till more than 20 years later. If a suit against KDS would have been barred by limitation, then recovery cannot be made from the petitioner(s) even they were held liable to pay. Without first bringing action against the principal, money cannot be claimed from the surety. A surety is unlike a guarantor of a loan, who could be proceeded against for recovery of money when principal defaults and is unable to repay debt. If the petitioner has admitted here and there in his correspondence in some fashion or the other trying to soften the blow on himself, he has done so under pressure, coercion and undue influence created by the circumstances, where lacs of his rupees remain withheld and unpaid. In any event, neither leave encashment nor gratuity can be recovered to execute the bond against the surety. Gratuity is for good service and is a right in movable property and leave encashment is the same. These are paid under rules of service. No rule or condition of service has been shown to this court where amount of leave encashment or gratuity can be withheld from the retiral benefits of a surety by executing the bond against him. The action is declared wholly illegal, arbitrary, unwarranted and unconstitutional. Neither can the action of the University be supported by reason nor by logic. The total amount of salary paid to KDS by virtue of grant of study leave was no more than Rs.1,83,960/-. This amount cannot be recovered from the petitioner, as it is not under bond. The bond was for KDS to return and serve for 5 years. The loss is notional and presumptive and has no legs to stand on as far as the petitioner(s) is/are concerned. The liability under the bond insofar as the petitioners are concerned as surety is an unfair contract, abuse of authority and against public policy in the case of a surety and hit by Section 23 of the Contract Act, as explained in Central Inland Water Transport Corporation Limited & another Vs. Brojo Nath Ganguly & another, AIR 1986 SC 1571. I have no hesitation to hold all actions and notices issued to the petitioner as illegal, arbitrary and unconstitutional. The GADVASU has acted in defiance of law in the most unreasonable manner. It deserves to be imposed exemplary costs but I refrain from doing so.

14. As a result of the foregoing discussion, I have no doubt in my mind that the recovery notice issued to the petitioner is illegal and deserves to be quashed. The writ petitions are allowed. All adverse actions of the University in withholding the petitioner's gratuity and leave encashment are declared illegal. The money has to be restituted. A writ of mandamus is issued to GADVASU to forthwith release the leave encashment and gratuity by foreclosing the FDRs and handing over the money into the petitioner's account along with interest earned thereon. Since the investment in FDRs has been made by the Bank as late as in 2011, the petitioner would be entitled to interest at the rate of 12% per annum on his outstanding dues from the date of retirement till deposit in FDRs. Thereafter, interest will run as stands accrued on the FDRs payable till realization. The petitioner in the connected petition is freed from the bond and his surety stands discharged in terms of this order. No recovery can be made from him by GADVASU.

01.03.2016 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**