

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.5737 of 2016
Date of Decision:10.03.2017

Jagbir Singh and others ... Petitioners
Vs.
District and Sessions Judge and another ... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Gobind Dhanda, Advocate for the petitioners.
Mr. K.D.S. Hooda, Advocate for respondent No.1.
Mr. Karan Sharma, A.A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, the petitioners have questioned the rejection of their claim for refund of amount deposited in lieu of one month notice period and issue of LPC (manual and online) vide communication dated 3.3.2015 (Annexure P-8) by 1st respondent.

The petitioners were appointed in the office of the 1st respondent-department on the following dates with pay scales mentioned here under:

Sr. No.	Name	Post	Date of Appointment/ Joining	Pay Scale
1	Jagbir Singh	Clerk	01.07.2009/ 24.07.2009	5900-20200/+ GP 2400
2	Renu Dudega	Clerk	01.07.2008/ 24.07.2009	5900-20200/+ GP 2400
3	Nishu Sharma	Stenographer Grade-III	16.09.2013/ 16.09.2013	5910-20200/-+ GP 2400/-
4	Jugnu Saini	Stenographer Grade-II	---	9300-34800/-+GP 3200/-
5	Rajesh Kumar	Clerk	22.02.2008/25.02.2008	5900-20200/+ GP 1900

Second respondent advertised for various posts in the Directorate of Medical Education & Research, Haryana. The petitioners

were candidates for the post of clerk and steno-typist. The petitioners have submitted their application through proper channel i.e. through office of the 1st respondent for participating in the process of selection. Petitioners No.1,2 and 5 were selected for the post of clerk. Whereas petitioners No.3 and 4 were selected and appointed to the post of Steno-Typist. After their selection and appointment, they were required to be relieved by the office of 1st respondent. The office of 1st respondent raised certain objections that they cannot be relieved. They have to give their resignation as per Annexure R-1 dated 23.12.2009 which is a communication of the Registrar General, Punjab and Haryana, High Court, Chandigarh to all the District and Sessions Judge. For want of time, the petitioners were compelled to submit their resignation while depositing one month salary. Consequently, 1st respondent relieved the petitioner's services in order to enable them to join new department-second respondent. Thereafter the petitioners approached the 1st respondent with a request for refund of deposited amount in lieu of one month notice and issuance of LPC. The same was declined by the 1st respondent on 3.3.2015 (Annexure P-8) which is under challenge.

Learned counsel for the petitioners submitted that the petitioners were working in the judicial department. They have applied for the post in the Medical Education Department which are part of the State of Haryana Government. Therefore, question of submission of resignation is not the criteria since it is inter department relieving and reporting from one department to another department with a view to take up new appointment. Due to compelling reasons that for want of time, the petitioners were compelled to submit their resignation by depositing one month salary with the 1st respondent. Learned counsel for the petitioners relied on Rule 4.19

(b) of CSR Volume II which reads as under:

“(b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.”

Rule 317 of the Punjab Civil Service Rules (Haryana) Volume II, which reads as under:

“317. In the case of an officer retiring on or after 5th January 1961, was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of:

xxx xxx xxx

(2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Government through proper channel/with proper permission of the administrative authority concerned.

Explanation: Where an employee in category (2) is required for administrative reasons for satisfying technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement, to join, with proper permission, the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement.

The gratuity, if any, received by the Government employee for temporary service under the Central/State Governments will, however, have to be refunded by him to the Government concerned.”

He also relied on circular issued on 9.3.1962 which reads as

under:

“Copy of Punjab Circular letter No.3497-IGS-62/7965, dated 9th March, 1962, from the Chief Secretary to Government, Punjab, to all the Heads of Departments, etc., etc.

Subject: Termination of employment of temporary Government Servants-Requirement of one month's notice.

I am directed to refer to the instructions issued with Punjab Government circular letter No.7464-G-II-58/8003 dated the 3rd April, 1959, 12545-G-III-60/2339, dated the 20th January, 1960 and 2073-7G-II-60/9530 date the 24th March, 1960, on the subject noted above, and to say that after careful consideration, Government have decided that temporary Government employees seeking employment within the State Government with the proper permission of the Head of the Department in which they are serving need not be asked either to give one month's notice or surrender one month's pay in lieu, thereof before joining the new Department.”

2. These orders are effective from the date of issue and the pending cases may be disposed off in accordance with these instructions.”

Having regard to the above provisions, it is crystal clear that it is only a technical resignation. Once an employee in order to obtain appointment in another department under a Government if he had submitted application through proper channel that suffice formalities and question of resignation do not arise. Therefore, insisting for resignation and depositing one month salary in lieu of notice is contrary to the Rule 4.19 (b) (supra), Rule 317 (supra) read with instructions dated 9.3.1962. Therefore, the impugned communication dated 3.3.2015 in rejecting the petitioner's claim for refund of deposited amount in lieu of one month notice and issue LPC is contrary to the aforesaid provisions. Hence, order dated 3.3.2015 (Annexure P-8) is liable to be set aside.

Per contra, learned counsel for the 1st respondent submitted that 1st respondent has insisted for resignation from the petitioners for the purpose of joining another department with reference to communication dated 23.12.2009 (Annexure R-1) in particularly ii) which reads as under:

“ii) The application for appointment by transfer to other departments, by way of advertisement or circulation, of the employees working in the Subordinate Courts may be forwarded with the express condition that in case their selection is made, no lien will be retained and if they intend to go, they are to submit resignation from their posts.”

Thus, the 1st respondent has acted with reference to communication and directions issued by Registrar General, Punjab and Haryana High Court, Chandigarh dated 23.12.2009. Therefore, there is no infirmity in the order dated 3.3.2015 (Annexure P-8) in declining to refund the one month salary and also issuance of LPC.

Heard learned counsel for the parties.

Crux of the matter in the present petition is whether the petitioners are entitled for refund of one month salary which has been deposited by them in order to join the new department i.e. medical Education and Research, Haryana and they are entitled for Last Pay Certificate or not?

It is undisputed that Judicial department and Medical Education and Research are part and parcel of State of Haryana Government. In order to obtain another appointment in different department under one State Government, question of resignation do not arise. Formal relieving from one department to another department would suffice. If an employee has resigned and joined new department, it would be only a technical resignation as stipulated in Rule 4.19 (b) (supra). Thus, the decision of the

1st respondent in refusing to refund the one month salary deposited by the petitioner and declining to issue LPC would be contrary to the aforesaid provision read with Rule 317 of Punjab Civil Service Rules (Haryana) Volume II and circular dated 9.3.1962. Therefore, reliance on the circular issued by Registrar General, Punjab and Haryana High Court, Chandigarh dated 23.12.2009 has no application in the case of the petitioners for the reasons that it is only a communication dated 23.12.2009 and it cannot override statutory rule i.e. 4.19 (b)(supra) read with Rule 317 (supra) which provide for mode of resignation in order to obtain another appointment in a different department. Therefore, order dated 3.3.2015 (Annexure P-8) is set aside. Ist respondent is directed to refund the deposit amount of one month salary by each of the petitioner and so also issue LPC to each one of them within a period of three months from today.

Petition stands allowed.

10.03.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**