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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 27th September, 2018

+ W.P.(C) 8500/2016

HEMANT TYAGI Petitioner
Through : Mr. Ankit Mehta, Adv.

versus

UCO BANK & ORS. Respondents
Through : None.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

1. There has been default in appearance on the part of the respondent–Bank yesterday as well as today, though the case was called out twice on each occasion. I have heard learned counsel for the petitioner at length, and proceed to decide the writ petition.

2. This writ petition assails the communication dated 17th May, 2012, issued to the petitioner by the respondent–Bank (hereinafter referred to as “the Bank”), to the extent the said communication requires payment, by the petitioner of ` 2 lakhs, stated to be “bond money” for leaving the services of the Bank before completion of two years. The terms of the letter of appointment of the petitioner, dated 11th August, 2011, have been invoked by the Bank, to support the said demand.

3. The facts relevant to adjudication of this dispute may briefly be stated as under :

(i) On 30th January, 2011, the petitioner underwent examination for recruitment of Probationary Officers conducted by the Bank. Consequent on his succeeding therein, offer of appointment, dated 11th August, 2011, was issued, to him, by the Bank. The petitioner was required, by the said communication, to join the services of the Bank by 29th August, 2011, which he did.

(ii) The said letter of appointment, dated 11th August, 2011, also required the petitioner to furnish a bond. The stipulation, to this effect, as contained in the said communication, required the petitioner to submit, to the bank, at the time of reporting for duties, “the bond in the enclosed proforma for serving the bank for two years after selection.” The proforma of the bond, which constituted an annexure to the letter of appointment, reads thus:

“BOND TO BE EXECUTED BY PROBATIONARY OFFICER ON RECRUITMENT”

Whereas I,..... Son/Daughter of
..... Resident
of.....Distt.....
State have been appointed as
Probationary Officer at UCO Bank in terms of Bank's
Appointment letter No.....
dated..... I.....
S/o/D/o..... appointed as
Probationary Officer hereby state that I shall not leave the
service of the Bank till completion of 2 years period from
the date of joining. In the event I leave or propose to leave
the service of the Bank before expiry of the aforesaid 2
years period, I shall pay to the Bank a sum of Rupees

Two Lacs plus applicable Service tax, only as liquidated damages before leaving the Bank or before being relieved from Bank's service. I bind myself and undertake to pay the aforesaid amount of Rs. 2 lacs plus applicable Service tax, without any demur merely on demand by the Bank. In case of any breach of these terms on my part, Bank shall be entitled to take suitable legal steps to recover the said amount of Rs. 2 lacs plus applicable Service tax from me.

Executed on day of 2013 at.....

(Signature of Executant)

Name :

Branch / Office”

(iii) On 4th May, 2012, i.e. prior to the expiry of two years from the date of joining the services of the Bank, the petitioner submitted a letter, seeking to resign from the service of the Bank for joining the State Bank of India. The said letter reads thus :

“The Sr. Manager
UCO Bank, Civil Lines
Jalandhar- 144001

Dtd : 04/05/2012

Sub: Resignation from the post of prob. Officer

Respected Sir,

This is to bring to your kind notice that, I, Hemant Tyagi, probationary Officer of Batch Aug 2011 want to hereby, resign from the duties at UCO Bank, as I am joining SBI. Kindly relieve me on 19/05/2012 and adjust my salary accordingly for the month of May, 2012.

Thanking you

Sd/-

Hemant Tyagi

(PFM No. 52206)”

(iv) It is also an admitted position that, though the petitioner had initially thought of joining the State Bank of India, as was mentioned in the afore-extracted letter dated 4th May, 2012, he ultimately joined the Ministry of Rural Development (hereinafter referred to as “the MRD”).

(v) The appointment letter, to this effect, dated 16th May, 2012, issued by the MRD also stands annexed to the writ petition.

(vi) On receiving the aforementioned letter on 4th May, 2012, from the petitioner, the Bank responded, *vide* the impugned letter dated 17th May, 2012, which, as already noted hereinabove, required the petitioner to deposit ` 2 lakhs, by way of enforcement of the bond submitted by him at the time of joining its services.

4. It is candidly admitted, by the petitioner, that he complied with the said request and deposited the bond amount of ₹ 2 lakhs.

5. The present writ petition has been filed on the premise that, though the petitioner deposited the bond amount of ₹ 2 lakhs, as directed, he had come to know subsequently that the said amount was actually not payable by him in view of Office Memorandum (OM) dated 29th July, 2004, issued by the Department of Public Enterprises (hereinafter referred to as “DPE”), which, in turn, referred to an earlier OM issued by the DPE, and which stood reviewed *vide* the said OM dated 29th July, 2004. The OM dated 29th July, 2004 deserves to be

reproduced, in *extenso*, thus :

“No.15(2)/2003-DPE(GM)/GL-57
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Block No.44, CGO Complex,
Lodhi road, New Delhi – 110003

Dated the 29th July, 2004

OFFICE MEMORANDUM

Subject : Enforcement/transfer of bond in respect of employees of Public Enterprises who leave the services of one Undertaking to join another Undertaking/Government.

The undersigned is directed to refer to this Department OMs no.BPE/GL-017/77/MAN/2(11)/75-BPE(GM-I) dated 13.6.1977 and 23.5.1981 and No.17/20/84-GM dated 5.2.1985 on the subject mentioned above, which were deleted vide this Deptt's O.M. No.20(5)/95-DPE(GM) dated 10th December, 1997. After deletion of these guidelines, Department of Public Enterprises received reference from various quarters for revival of these guidelines to enable them to regularize enforcement/transfer of bond in the case of public sector employees joining services in Central Govt./State Govt./Autonomous Bodies. The position has been reviewed and after careful consideration, it has been decided to revive this Department's OMs. Dated 13.6.1977, 23.5.1981 and 5.2.1985 with the following modifications:

- (a) The bond executed by employees of the Public Enterprises, who have received scientific/technical training at the cost of Public Enterprises and have applied through proper channel during the currency of the bond join Central Govt./State Govt. services or take up employment under quasi-government organizations or any other public enterprise either on the basis of competition examinations/tests interviews organized by those organizations or the Union Public Service Commission should not be enforced subject to the condition that a fresh bond is taken to ensure that the

employee serves the new employer for the balance of the original bond period.

(b) The terms of bond whereby an employee of a Central public enterprise receiving scientific and technical training out the expenses of the Govt./Public Sector Enterprises undertakes to repay this specified amount the event of his failure to serve the enterprise for a stipulated period after completion of his training should not be enforced against an employee who leaves service of public enterprise to secure, with proper permission employment under the Central Govt., a public enterprise or an autonomous body wholly or substantially owned/financed/controlled by the Central/State Govt. A fresh bond should be taken from the person concerned to ensure that he serves the new employer for the balance of the original period.

(c) To ensure that the requirement of obtaining a fresh bond from a person, where necessary, is fulfilled, the enterprise with whom the employee has executed the original bond may at the time of forwarding his application write to the organization etc, under whom the employee intends to take up another appointment intimating them about the bond obligation of the individual and clarifying that in the case of his selection for the new post, his release will be subject to the condition that the new organization take from him a fresh bond binding him to serve them for the balance of the original bond period; In case he fails to serve the new department/organization etc. or leaves it before completion of the original bond period for a job where exemption from bond obligation is not available the proportionate bond money should be realized from the individual and refunded to the first organisation with whom he originally executed the bond.

2. All the administrative Ministries/ Departments are requested to kindly issue instructions accordingly to the public sector enterprises under their administrative control.

6. It may be noted, here, that, subsequently, *vide* the following OM dated 5th October, 2009, the Department of Financial Services, Ministry of Finance, requested all Government Enterprises/Public Sector Units, coming under the administrative control of the Ministry of Finance to comply with the said instructions :’

“No.20/53/15(2)/2009-IR
Government of India
Ministry of Finance
Department of Financial Services

Jeevan Deep Building
Parliament Street
New Delhi – 110001
Dated, the October 05, 2009

OFFICE MEMORANDUM

Subject : Enforcement/transfer of bond in respect of employees of Public Sector Enterprises

The undersigned is directed to refer to this Ministry’s O.M.No.17/20/84-GM dated 05th February 1985 and DPE O.M.No.15(2)/2003-DPE(GM)/GL-57 dated 29th July 2004 on the above subject. All Government of Enterprises/Public Sector Units coming under the administrative control of Ministry of Finance are requested to comply with the instructions contained therein. A copy of above circulars is enclosed for compliance.

(Rajinder Sood)
Under Secretary to the Government of India”

7. Mr. Ankit Mehta, appearing for the petitioner, relies on clause (a) as well as clause (b) of the OM dated 29th July, 2004 (*supra*) issued by the DPE. As is apparent from a reading thereof, clause (a) stipulates that the bond executed by employees of public enterprises, who applied through proper channel during the currency of the bond

to take up employment under quasi-government organizations or any other public enterprise, should not be enforced subject to the condition that a fresh bond was taken to ensure that the employee serves the new employer for the balance of the original bond period. Clause (b), similarly, stipulates that the terms of bond should not be enforced against the employee who leaves the services of the public enterprise to secure, with proper permission, employment under the Central Government, a public enterprise or an autonomous body wholly or substantially owned/financed/controlled by the Central/State Government and that, in such cases, a fresh bond should be taken from the person concerned, to ensure that he served the new employer for the balance of the original period.

8. The Bank does not dispute the applicability of the said instructions. Equally, there is no dispute about the fact that the petitioner had in fact, sought permission of the Bank before proceeding to join the State Bank of India (as he thought at that stage) and that such permission was indeed, granted, subject, *albeit* to the condition that the bond amount would be paid.

9. Learned counsel for the petitioner submits that, in view of the aforementioned clauses contained in the OM dated 29th July, 2004 (*supra*) issued by the DPE, the respondents could not have sought to enforce the bond amount from the petitioner, as the petitioner had initially contemplated joining the State Bank of India and had, ultimately, joined the MRD.

10. A reading of the counter affidavit filed by the Bank reveals that, on merits, the applicability of the aforementioned OMs dated 29th July, 2004 and 5th October, 2009, issued by the DPE to the Bank, stands explicitly admitted. Para 6 of the counter affidavit may, in this context, be reproduced, to advantage, thus :

“6. That it is stated that it was as per the Office Memorandum dated 29.07.2004 which deals with Enforcement/transfer of bonds in respect of employees of public Enterprises who leave the services of one Undertaking to join another Undertaking/Government and the same is effective and applicable to the Respondent No.1-3. That as per the said Office Memorandum, the answering Respondents declined to refund the bond money was declined.”

11. The Bank, therefore, seeks to justify the refusal to refund the bond amount deposited by the petitioner solely on the ground that, at the time of his leaving the services of the Bank, no fresh bond was submitted by him to the new employer, stating that he would serve the residual period of the bond with the said new employer, as required by the OM dated 5th October, 2009 (*supra*).

12. This submission, in my view, is thoroughly misconceived. The OM, dated 29th July, 2004, does not require the departing employee to *give* a fresh bond undertaking to serve the new employer for the remainder of the bond period; rather it requires the bank to *take*, from him, such a fresh bond. It was the respondent, therefore, who had, so to speak, “make the first move”. No averment, to the effect that the Bank called on the petitioner to submit such a fresh bond, is forthcoming on the record. Learned counsel for the petitioner submits, on instructions, that the bank never sought any such fresh bond from

him at the time when he joined the subsequent organization, i.e., the MRD.

13. In that view of the matter, the non-furnishing by the petitioner of a fresh bond, undertaking to serve the MRD for the remainder of the bond period, cannot be cited as a justification for the Bank refusing to return the bond amount recovered from the petitioner. In any event, learned counsel for the petitioner points out that his client actually served the MRD till 2016, which was much in excess of the remainder of the bond period as entered into while joining the services of the Bank in August.

14. As such, the stipulation that the petitioner was required to serve the subsequent government organization for the remainder of the bond period also stands satisfied.

15. This being the sole ground on which the refusal to refund the bond amount of the petitioner is sought to be justified, and the applicability of the OMs dated 29th July, 2004 and 5th October, 2009, issued by the DPE not being disputed by the Bank, I am of the view that the refusal, by the Bank to return the bond amount to the petitioner is completely arbitrary.

16. Before parting with this judgment, I may note that a preliminary objection has been raised, in the counter affidavit of the Bank, regarding the territorial jurisdiction of this Court to entertain the present proceedings. I am of the view that, in view of Article 226(2)

of the Constitution of India, there can be no dispute regarding the maintainability of this writ petition before this Court, as the petitioner resides at Delhi, the execution of the bond took place at Delhi, and the enforcement of the bond, qua the petitioner, also took place at Delhi. As such, to say the least, a substantial part of the cause of action arose within the territorial jurisdiction of this Court. This objection of the respondent, too, therefore, fails.

17. Resultantly, for the reasons aforestated, this writ petition succeeds and is allowed. The respondents are directed to refund, to the petitioner, the bond amount of ₹ 2 lakhs paid by the petitioner to the respondent within a period of four weeks from the date of receipt by the respondent of the certified copy of this judgment.

18. Learned counsel for the petitioner prays for award of interest on the amount. However, in view of the facts of the case, I am not inclined to accede to the said prayer.

19. After the judgment in this case was completely dictated, Mr.Sarfaraz Khan appeared for the respondent and sought to submit that arguing counsel for the respondent would be ready to argue this matter after lunch. Needless to say, such a submission can hardly be countenanced at this stage.

20. There shall be no order as to costs.

C.HARI SHANKAR, J.

SEPTEMBER 27, 2018/mk