

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.11964 of 2019 (O&M)
Date of decision : 20.12.2019

Prerna Petitioner

Versus

The State of Haryana and Ors. Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Namit Kumar, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Sudarshan Kumar, Advocate for
Mr. Deepak Balyan, Advocate for respondent No.2.

Mr. Ashok Kumar Jindal, Advocate for respondent No.3.

B.S. Walia, J.

[1] Prayer in the writ petition is for the issuance of a writ of certiorari for quashing letter, Annexure P/9 dated 18.12.2018 directing the petitioner to refund the Fellowship amount of ₹41,138/-, letter, Annexure P/11 dated 21.01.2019 informing the petitioner that her request for not being asked to refund the fellowship amount had been rejected as also letter Annexure P/12 dated 05.03.2019 to the same effect.

Prayer is also for the issuance of a writ of Mandamus for directing respondent No.2 to release the remaining amount of Fellowship and Contingency from 01.04.2017 to 12.07.2018.

[2] Brief facts of the case leading to the filing of the writ petition are that the petitioner acquired degree of B.Sc. (Non-Medical) in the year 2012 from Kurukshetra University, Kurukshetra. Thereafter, she completed her M.Sc. (Chemistry) in the year 2014 from Kurukshetra University and completed her B.Ed. in the year 2015 from the said University and on 29.03.2016 got admitted in Ph.D. in the Department of Chemistry, Kurukshetra University, Kurukshetra. The petitioner also qualified CSIR-NET in December 2014, December, 2015 and December 2016 besides GATE exams in the years 2015, 2016 and 2017 respectively. She also qualified BARC-2016 and UPSC-Geo Scientist Exams in 2016 and 2017 as also Haryana Teachers' Eligibility Test, 2016 (PGT) and further qualified 2017-CSIR-NET JRF.

[3] On the petitioner qualifying NET in December 2014, she became entitled for Haryana State Council For Science and Technology (for short – "HSCST") Fellowship of ₹18,000/- per month along with contingency amount from respondent No.2 in terms of HSCST Fellowship Programme Scheme (Annexure A-1/A). As per the aforementioned Scheme, a stipend of ₹18,000/- per month is payable for the first two years and ₹21,000/- from third year to the candidates and in addition thereto, Annual Contingent Grant of ₹20,000/- is also admissible. The petitioner being eligible applied for HSCST Fellowship and vide letter Annexure P/2 dated 12.01.2017, she was directed to come present on 20.01.2017 for verification of documents. Consequently, the petitioner visited the office of respondent No.2 along with all the necessary documents/certificates and vide letter dated 27.01.2017, she was declared entitled for the award of Junior Research Fellowship (JRF) under HSCST Fellowship Programme and she was directed to send the Ph.D. joining report

etc. Consequently, the petitioner submitted the necessary documents along with undertaking, Annexure P/4 dated 28.01.2017.

[4] That vide letter dated 15.06.2017, the petitioner was sanctioned a sum of ₹41,138/- on account of Fellowship and Contingency for the period 28.01.2017 to 31.03.2017 and the same was disbursed in the bank account of the petitioner in December, 2017 vide letter, Annexure P/5 dated 15.06.2017.

[5] That in the meantime, the petitioner applied for the post of Assistant Professor (Chemistry) pursuant to advertisement issued by the Haryana Public Service Commission and was selected on 15.01.2017. However, the said selection was challenged before this Court by way of CWP No.21513 of 2017 and other connected writ petitions and the issuance of appointment letters of the selected candidates was stayed vide order dated 21.09.2017. Eventually, the said writ petition along with other connected writ petitions was dismissed by this Court vide judgment dated 12.07.2018, whereupon the petitioner received appointment letter, Annexure P/6 dated 12.07.2018 whereby she was directed to join immediately in the Directorate i.e. Office of Director General, Higher Education, Haryana, Panchkula. The petitioner then joined as Assistant Professor (Chemistry) on 12.07.2018 itself. Thereafter, the petitioner, vide letter, Annexure P/7 dated 13.07.2018 submitted her resignation from HSCST-JRF on joining as Assistant Professor (College Cadre) in the subject of Chemistry w.e.f. 12.07.2018 (F.N.). The said resignation letter was forwarded by the respondent / University to respondent No.2 / HSCST vide letter Annexure P/8 dated 03.10.2018.

[6] That the petitioner received letter, Annexure P/9 dated 18.12.2018 from the office of respondent No.2 directing her to refund the entire amount of

petitioner submitted reply vide letter dated 28.12.2018 stating that she had worked as HSCST-JRF Fellow from 28.01.2017 to 12.07.2018 in the Chemistry Department and Fellowship and Contingency was sanctioned for the period 28.01.2017 to 31.03.2017 i.e. ₹41,138/-. Thereafter, she did not receive any amount of Fellowship for the remaining period from 01.04.2017 to 11.07.2018 and on her joining as Assistant Professor (College Cadre) in the Department of Higher Education on 12.07.2018, she had submitted her resignation on 13.07.2018, therefore, her case be considered sympathetically.

In response to the reply of the petitioner, she received a letter, Annexure P/11 dated 21.01.2019 informing that her request had been filed by the office and consequently, she should refund the entire amount of Fellowship and Contingency amounting to ₹41,138/-. The said letter was followed by another letter, Annexure P/12 dated 05.03.2019 to the same effect. As per the petitioner, she is entitled for a sum of ₹3,02,596/- for the period from 01.07.2017 to 11.07.2018 on account of Fellowship and Contingency amount which is yet to be paid by respondent No.2.

[7] Communications, Annexure P/9 dated 18.12.2018, Annexure P/11 dated 21.01.2019 and Annexure P/12 dated 05.03.2019 directing the petitioner to refund the entire amount of Fellowship amounting to ₹41,138/-, besides, declining to pay Fellowship and Contingency amount for the period from 01.04.2017 to 11.07.2018 have been challenged by the petitioner by way of the instant writ petition *inter alia* on the ground that the appointment letter of the petitioner as Assistant Professor was dated 12.07.2018 and she was directed to join immediately. As such, she joined on 12.07.2018 itself and there was no occasion for the petitioner to submit her resignation before the said date and

that in view of the matter, the petitioner could not be directed to refund the

amount of Fellowship which she had received for her research work as a Ph.D. student.

Likewise, other similarly situated candidates who also got Fellowship from UGC-CSIR till 12.07.2018 had not been asked to refund the amount, consequently, the action of the respondents was totally discriminatory and violative of Article 14 of the Constitution of India besides, reply, Annexure P/10 dated 28.12.2018 of the petitioner to the communication, Annexure P/9 dated 18.12.2018 was rejected by respondent No.2 vide letter, Annexure P/11 dated 21.01.2019 by passing a totally cryptic and non-speaking order.

[8] Reply has been filed on behalf of respondent No.2/HSCST relying upon Clause (h) of the undertaking i.e. Annexure P/4 dated 28.01.2017 given by the petitioner on acceptance of award of Junior Research Fellowship (JRF) under the HSCST Fellowship Programme. The same is reproduced as under :-

“h) I will not leave the HSCST Fellowship without permission of HSCST. In case of leaving without permission, I will refund the entire amount of fellowship to the Council through University / Institution within one month.”

[9] In the light of the aforementioned, Clause (h) of the undertaking, Annexure P/4 it is contended that the petitioner had not taken any permission from respondent No.2/HSCST before leaving the Fellowship. The plea of the petitioner for relaxation in Clause (h) had been considered and declined. Reliance has also been placed on Clause (v) of the Obligations of Research Fellow which reads as under:-

“(v) No fellow shall discontinue his/her Fellowship without prior approval of HSCST. In case he/she wishes to discontinue the fellowship prior to completion of the tenure or attainment of original objectives of research, he/she must submit the resignation to HSCST through the Guide one month in advance, indicating specific reasons for not continuing the Fellowship. The Fellowship shall cease from the date stipulated in the HSCST letter approving the resignation.”

[10] It has been contended that the petitioner did not submit any letter of resignation to respondent No.2/HSCST i.e. the funding agency nor any letter of information was received through the Guide one month in advance, indicating specific reasons for not being able to continue the Fellowship, thus, violating the terms and conditions agreed upon.

Further, the question of releasing further grant did not arise as the petitioner clearly violated the undertaking, Annexure P/4 signed by the petitioner with Prof. Kiran Singh, Supervisor of the candidate and Registrar of the University.

[11] That the petitioner had submitted her resignation to the Chairman, Department of Chemistry, Kurukshetra University, Kurukshetra on 13.07.2018 (Annexure P/7) and not to respondent No.2/HSCST i.e. the funding agency. The petitioner had not even endorsed the copy of the resignation letter for information to respondent No.2/HSCST. Further, as per Clause No.(v) under the Obligations of Research Fellow Terms and Conditions of the Scheme, the petitioner was required to submit her resignation to respondent No.2/HSCST

through the Guide one month in advance, indicating specific reasons for not continuing the Fellowship which was not adhered to by the petitioner and the University intimated about the resignation of the petitioner through letter dated 03.10.2018 to respondent No.2/HSCST which was received on 05.10.2018 i.e. approximately three months late which was in sheer violation of Clause No. (v) as referred to above.

[12] Respondent No.3 has also filed reply in which it has been mentioned that the funding agency i.e. respondent No.2/HSCST did not accept the resignation of the petitioner on the plea that the petitioner did not comply with Clause (h) of the undertaking, Annexure P/4 submitted by her to respondent No.2/HSCST while availing the Award of Research Fellowship and that as per Clause (h) of the said undertaking submitted by the petitioner, on acceptance of the Award of Research Fellowship, she would not leave the HSCST Fellowship without permission of HSCST/respondent No.2 and in case of leaving without permission, she would refund the entire amount of Fellowship to the Council through University/Institute within one month. However, the petitioner did not obtain prior approval from respondent No.2/HSCST and submitted her resignation after joining Lecturership. The funding agency i.e. HSCST/respondent No.2 further requested respondent No.3 to get refund of the entire amount of Fellowship amounting to ₹41,138/- from the petitioner within one month from the date of issuance of letter, Annexure P/9 through cheque in favour of the Secretary EC, HSCST, Panchkula. The representation of the petitioner to the HSCST/respondent No.2 i.e. funding agency to waive off aforementioned condition of Clause (h) of her undertaking was rejected. Thus, the matter was squarely between the petitioner and respondent No.2. It has further been mentioned that the funding

agencies of the candidates whose names had been mentioned were different and were having different terms and conditions for award of Fellowship funds and entailing no condition to refund the Fellowship amount.

[13] The petitioner has filed replication, Annexure P/13 taking a plea inter alia of the case being covered with the principle of *lex non cogit ad impossibilia*. In other words, the law does not enforce impossibilities. Reliance has been placed on the decision of a Division Bench of this Court in Rajneesh Garg, ADC to Shri Manohar Lal Khattar vs Chief Electoral Officer, Haryana and others and on the said basis, it has been contended that it was impossible for the petitioner to submit the resignation before 13.07.2018 as she joined as Assistant Professor (Chemistry) on 12.07.2018 in pursuance to Appointment Letter , Annexure P/6 dated 12.07.2018. Per contra, counsel for the respondents contention is that the matter is squarely covered by the agreed terms and conditions.

[14] I have considered the submissions of learned counsel for the parties.

[15] Clause (h) of the undertaking, Annexure P/4 dated 28.01.2017 signed by the petitioner at the time of acceptance of award of Research Fellowship makes it crystal clear that the petitioner could not leave the HSCST Fellowship without permission of respondent No.2/HSCST and that in case of leaving without permission, she was to refund the entire amount of fellowship to the Council through University/Institution within one month.

[16] The petitioner vide communication, Annexure P/7 dated 13.07.2018 requested the Chairman, Department of Chemistry, Kurukshetra University, Kurukshetra to accept her resignation from HSCST-JRF w.e.f.

12.07.2018 (FN) on account of having joined as Assistant Professor (College

Cadre) in the subject of Chemistry in the Department of Higher Education on 12.07.2018 (AN). The resignation letter of the petitioner was forwarded vide Annexure P/8 by Kurukshetra University, Kurukshetra to the Secretary/EC, HSCST for its decision. The same was rejected vide Annexure P/9 on the ground that the petitioner had resigned from HSCST Fellowship without permission of the Council which was against the undertaking signed by the petitioner on acceptance of the award of Research Fellowship in terms of Clause (h). Accordingly, the petitioner was directed to refund the entire amount of Fellowship amounting to ₹41,138/- within one month from the date of issue of the letter through cheque in favour of Secretary EC, HSCST, Panchkula. The same was followed by communication, Annexure P/11 dated 21.01.2019 and further followed by communication Annexure P/12 dated 05.03.2019 from Admn. Officer, Accounts-I to the Chairperson, Department of Chemistry, Kurukshetra University, Kurukshetra informing of the decision of the HSCST/respondent No.2 to the petitioner so that she could return the entire amount of Fellowship amounting to ₹41,138/- i.e. the entire amount of Scholarship for the period from 28.01.2017 to 31.03.2017.

[17] The decision in Rajneesh Garg's case (Supra) relied upon by the learned counsel for the petitioner was specifically ordered not to be treated as a precedent on account of the same having been passed in the peculiar facts and circumstances of the case namely of the Chief Minister, Haryana being unable to travel from Mandi Dabwali to Chandigarh due to inclement weather conditions in Mandi Dabwali caused by the dust storm, as a result of which the helicopter could not take off and the distance between Mandi Dabwali to Chandigarh being around 340 Kms. However, the Deputy Commission-cum-

Minister was not permitted to stay overnight in the Rest House at Jind/Narwana after 5.00 p.m. Thereupon a request was made to the Chief Electoral Officer, Haryana in the evening of 10.05.2019 as well as to the Election Commission of India on 10.05.2019 mentioning therein that in the extra-ordinary circumstances, due to which Chief Minister could not fly from Mandi Dabwali to Chandigarh taking into account that the weather had started packing up in the after-noon at Chandigarh and it would have been extremely difficult for the Chief Minister to travel distance of 340 Kms at one stretch. A Division Bench of this Court by applying principle of *lex non cogit ad impossibilia* held that the law did not enforce impossibilities but that the order be not treated as a precedent since the same had been passed in the peculiar facts and circumstances of the case.

[18] However, the judgment would be of no avail to the petitioner since the disability to perform the mandatory duty should be without default. In other words, the performance has to be impossibility beyond the control of the person required to perform the duty, a circumstance over which the person required to perform the duty has no control at all. A reference in this connection is made to the decision of Hon'ble the Supreme Court in case **Industrial Finance Corporation of India vs The Cannanore Spinning and Weaving Mills Ltd., 2002 (5) SCC 54**. Relevant extract of the same is reproduced as under :-

*“28. We have first thus to consider as to the exact meanings of the words or expressions used in the covenant between the parties. There can be no doubt that a man may by an absolute **contract** bind himself to perform which subsequently however becomes impossible, or to pay damages for the **non-performance***

*and this interpretation is to be placed upon an unqualified undertaking, where the event which causes the impossibility was or might have been anticipated and guarded against in the **contract**, or where the impossibility arises from the act or default of the promissory.*

29. *But where the event is of such a character that it cannot reasonably be supposed to have been in the contemplation of the **contracting** parties when the **contract** was made, they will not be held bound by general words which, though large enough to include, were not used with reference to the possibility of the particular contingency which afterwards happened. It is on this principle that the act of God is in some cases said to excuse the breach of a **contract**.*

30. *The Latin Maxim referred to in the English judgment “**lex non cogit ad impossibilia**” also expressed as “*impotentia excusat legem*” in common English acceptation means, the law does not compel a man to do that which he cannot possibly perform. There ought always thus to be an invincible disability to perform the obligation and the same is akin to the Roman Maxim “*nemo tenetur **ad impossibilia***”. In Broom’s Legal Maxims the state of the situation has been described as below-*

*“It is, then, a general rule which admits of ample practical illustration, that *impotentia excusat legem*; where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over, there the law will in general excuse him (t) : and though impossibility of performance*

*is in general no excuse for not performing an obligation which a party has expressly **undertaken** by **contract**, yet when the obligation is one implied by law, impossibility of performance is good excuse. Thus in a case in which consignees of a cargo were prevented from unloading a ship promptly by reason of a dock strike, the Court, after holding that in the absence of an express agreement to unload in a specified time there was implied obligation to unload within a reasonable time, held that the maxim **lex non cogit ad impossibilia** applied, and Lindley, L.J. said : “We have to do with implied obligations, and I am not aware of any case in which an obligation to pay damages is ever cast by implication upon a person for not doing that which is rendered impossible by causes beyond his control.”*

[19] Similarly, Madras High Court by referring to the aforementioned decision of Hon’ble the Supreme Court in case **Tamil Nadu State Election Commission vs Dravida Munnetra Kazhagam, 2017 (5) CTC 449** observed as under:-

*“54. In **Special Reference No.1 of 2002, In re (Gujarat Assembly Election matter), reported in (2002) 8 SCC 237**, the Supreme Court opined that the election to the Legislative Assembly of Gujarat, which had been dissolved before the expiration of its normal duration, would have to be convened within six months from the date of its last meeting. Concurring with the opinion of Khare, J. Arijit Pasayat, J. observed, “the impossibility of holding the election is not a factor against the Election Commission. The maxim of law **impotentia excusat***

legem is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform.

‘Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him.’ Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God.

55. *The maxim of law Impotentia excusat legem is connected with the maxim lex non cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law, that disability might excuse performance. The law does not compel one to do that which is impossible. The disability to perform the mandatory duty should be without default. The performance has to be an impossibility beyond the control of the person required to perform the duty, a circumstance over which the person required to perform the duty has no control at all.”*

[20] The principle of *lex non cogit ad impossibilia* would not apply in the facts and circumstances of the case since, admittedly the petitioner was aware of Clause (h) in the undertaking signed by her and therefore in terms of the agreement executed with the respondents, she was required to take prior permission of the respondents before leaving the HSCST Fellowship. She could not leave the HSCST Fellowship without permission of respondent No.2/HSCST and in case of leaving without permission, she was required to refund the entire amount of fellowship to the Council through University/Institution within one month. Further, as per the Obligation of Research Fellow which is part of the general terms and conditions of Research Fellowship, a fellow cannot discontinue his/her Fellowship without prior approval of HSCST and in case he/she wishes to discontinue the fellowship prior to completion of the tenure or attainment of original objectives of research, he/she was required to submit the resignation to HSCST through the Guide one month in advance, indicating specific reasons for not continuing the Fellowship. The Fellowship would in such a case cease from the date stipulated in the HSCST letter approving the resignation.

[21] In the instant case, the petitioner was issued appointment letter Annexure P/6 on 12.07.2018 and she joined as Assistant Professor (Chemistry) on 12.07.2018 itself. Thereafter, she vide letter, Annexure P/7 dated 13.07.2018 submitted her resignation from HSCST-JRF on joining as Assistant Professor (College Cadre) in the subject of Chemistry i.e. w.e.f. 12.07.2018 (F.N.). Therefore, it was not a case of it being impossible for the petitioner to have obtained the prior permission of the Council and the same could have been done before joining on the selected post after the declaration of result of selection which was much prior in time. Not having done so, the case is

squarely covered by Clause (h) of the undertaking Annexure P/4 dated 28.01.2017 signed by the petitioner as well as Clause No.(v) of the Obligations of Research Fellow Terms and Conditions of the Scheme. The petitioner cannot avail the benefit of the judgment relied upon and the maxim referred to above as she was aware of her selection pursuant to the final result and she made an informed and voluntary choice not to seek prior permission to resign till the dismissal of the writ petition.

[22] Resultantly, I find no merit in the writ petition and the same is dismissed.

(B.S. Walia)
Judge

20.12.2019
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- 1. Whether speaking/reasoned : Yes/No.
- 2. Whether reportable : Yes/No.