

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

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CM No.2893 of 2020 in/and
Civil Writ Petition No.8622 of 2015

Date of Decision: February 24th, 2020

Baljinder Kaur Gill

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Amar Vivek, Advocate
with Mr. Sunny Rawat, Advocate
for the applicant-petitioner.

Ms. Devaki Anand Sullar, Assistant Advocate General, Punjab.

Mr. Vipin Mahajan, Advocate
for respondent No.3.

AUGUSTINE GEORGE MASI, J.

CM No.2893 of 2020

Prayer in this application is for recall of the order dated 10.02.2020, whereby the writ petition was withdrawn by the counsel for the petitioner with liberty to avail of the alternative remedy in accordance with law.

Having considered the submissions made by the counsel for the applicant-petitioner and on the basis of the pleadings and the reasons assigned for seeking recall of the order dated 10.02.2020, which is duly supported by the affidavit of the counsel himself, who had appeared on 10.02.2020 in Court, the present application is allowed.

Order dated 10.02.2020 is recalled and the writ petition is restored to its original number.

CWP No.8622 of 2015

Petitioner has approached this Court praying for issuance of a writ in the nature of certiorari for setting aside the communication dated 17.06.2014 (Annexure P-16), whereby her claim as projected by her

in her representation dated 11.02.2014 (Annexure P-15), stands rejected. Writ of mandamus has also been prayed for, whereby the relieving certificate dated 19.03.2013 has been shown to be effective from 11.01.2009 despite it being dated 19.03.2013 (Annexure P-11) and directing the respondents to not give effect to resignation of the petitioner from an antedate i.e. 11.01.2009, rather to be effective from the date when the same has been accepted i.e. 19.03.2013 as it is asserted that she had submitted her resignation in October 2012. Recovery has also been sought by the petitioner to the tune of ₹10 lakh, which was the bond money deposited by her in March 2013 as demanded by respondent No.3-Beant College of Engineering and Technology, Gurdaspur.

2. Petitioner asserts that she was appointed on 05.08.1996 to the post of Lecturer in the Beant College of Engineering and Technology, Gurdaspur- respondent No.3 following due process of law. She was promoted to the post of Lecturer (Senior Scale) on 05.08.2001. She worked as a Coordinator-Chemical Engineering from 28.03.2003 to August 2004. In August 2004, petitioner was sanctioned study leave for a period of two years to pursue her Ph.D. This leave period was extended by one year till the year 2007. After completion of her Ph.D., she joined the college in August 2007 and was promoted on 18.10.2007 as an Assistant Professor. On 08.08.2008, she was appointed as Head of the Department of Chemical Engineering and Biotechnology. Because of her health issues, she applied and proceeded on leave without pay for the period 12.01.2009 to 29.05.2009 and joined back the respondent-college on 01.06.2009. Thereafter she applied for two months summer vacation leave, which was

granted to her, however, as per the directions of the Principal of the college, she returned in the department on 09.06.2009 for conducting the interviews of the staff under the Career Advancement Scheme. Petitioner was not paid the salary for the months of June and July 2009, which was withheld. Petitioner joined back on 03.08.2009 and sought extension of leave as extraordinary leave without pay on medical grounds from time to time with effect from 03.08.2009 to 08.09.2010 and finally joined her duties on 09.09.2010, when she attended the college. She again proceeded on leave because of family problems with effect from 13.09.2010

3. Under pressure from family, petitioner had to apply through proper channel on 10.09.2010 for recruitment to the post of Assistant Professor against advertisement issued by the Panjab University, Chandigarh, which was not forwarded by the college authorities. When she came to know that a colleague of her has been issued a No Objection Certificate for appearing in interview in Panjab University, she also submitted an application dated 24.11.2010 and visited the college campus and requested the Principal for issuance thereof. An affidavit and undertaking was sought from the petitioner by the Principal of respondent No.3-college as she was under bond, which she submitted but still she was not issued the No Objection Certificate. A letter dated 26.11.2010 (Annexure P-7) of refusal was handed over to the petitioner stating therein that the No Objection Certificate cannot be given to her till the time she was under the bond period.

4. Petitioner came to know that if she deposited the bond money, she would be free to join employment in any other college. Petitioner, in the

meanwhile, received a letter from the respondents directing her to immediately join her duties. It was under these circumstances that the petitioner sent a letter to the Chairman, Board of Governors with a request on 29.09.2011 for accepting her resignation and further requesting for waiving of the bond amount since the petitioner was not working for the last more than two years and was going through a rough time. She again wrote a letter dated 16.01.2012 (Annexure P-8) to the Chairman, Board of Governors, requesting that she be informed about the status of her resignation but without any response.

5. Petitioner had sent an advance copy of her application to the Panjab University directly and she received an interview call, which was scheduled to be held on 27.10.2012. Petitioner again applied for a No Objection Certificate from the college authorities on 25.10.2012 (Annexure P-9) but without any response. Petitioner met the Chairman of the Board of Governors personally on 26.10.2012 but that also did not yield any result.

6. She, therefore, submitted her resignation on 26.10.2012 (Annexure P-10) vide registered post from Chandigarh and requested respondent No.3 to calculate the amount, which the petitioner was required to deposit as the bond requirement and to also include three months' salary in lieu of notice period. She was intimated that an amount of ₹10 lakh was to be deposited by her. She deposited the said amount on 15.03.2013, which led to the issuance of her relieving certificate by the college but to her utter surprise and shock, her date of relieving was mentioned as 11.01.2009 instead of 19.03.2013 (Annexure P-11).

7. Request for experience certificate and release of the other benefits such as Contributory Provident Fund dues and the arrears of the revised pay scales was also made by the petitioner on 19.03.2013. When no response was received, petitioner submitted a comprehensive demand notice dated 11.02.2014 (Annexure P-15) highlighting therein all these aspects, which has been arbitrarily turned down by the respondents vide impugned order dated 17.06.2014 (Annexure P-16). This has led to the petitioner approaching this Court by way of the present writ petition.

8. Upon notice, reply has been filed by respondent No.3, which is formal in nature as the contesting respondent is respondent No.3, which has filed a detailed reply.

9. As regards the release of the Contributory Provident Fund amount and the arrears are concerned, it has been asserted that the petitioner was required to submit undertaking for the release of the Contributory Provident Fund amount, which has been submitted by her on 18.12.2017 as per the pre receipt proforma, copies whereof have been appended as Annexure R-3/1.

10. As regards the reason for non-acceptance of her resignation dated 26.10.2012, it has been asserted that she was required to submit No Dues Certificate from the different departments of the college, which process was completed and it is thereafter on 19.03.2013 that the No Dues Certificate has been issued to the petitioner. In pursuance thereto, resignation of the petitioner was accepted by the competent authority on the same date i.e. 19.03.2013 (Annexure P-11). As the petitioner had last worked with the respondents in the college on 11.01.2009, therefore, her

resignation was accepted from the said date. In this regard, reliance has been placed upon the letter dated 24.11.2010 (Annexure R-3/3) of the petitioner, where she had herself stated that she had served the college till 11.01.2009. It has further been pointed out that the petitioner has very cleverly deleted the date 11.01.2009 in the typed copy (Annexure P-6). It has thus been stated that since she had worked till 11.01.2009 with the respondents, her resignation was accepted from the said date.

11. As regards the entitlement of the petitioner for the salary and arrears from 11.01.2009 to 19.03.2013, it has been stated that since she has not worked during this period except on 01.06.2009, 09.09.2010 and 10.09.2010 and in between the period was where extraordinary leave without pay was sought by the petitioner which was rejected, so she is not entitled to the said benefit. As regards the prayer of the petitioner for her entitlement for refund of the bond amount, it is submitted that the petitioner availed three years' study leave, which expired on 25.08.2007. As per the rules of study leave, petitioner was required to serve the college for five years thereafter. She has executed a bond to this effect, copy whereof has been appended as Annexure P-3. Since she has not served the respondents for the requisite period, she was required to deposit the bond amount. The relevant clause of the rules/bye-laws of the college is Clause 6.14, which deals with the study leave, which has been appended as Annexure R-3/5. As a matter of fact because of the absence of the petitioner with effect from 12.01.2009 onwards, the respondent-college was in the process of terminating the services of the petitioner but in the meanwhile she had submitted her resignation and taking a lenient view thereon,

her resignation was accepted. Reference has also been made to the letter dated 02.08.2011 (Annexure R-3/10), whereby she was intimated that her representation for extraordinary leave from 13.09.2010 to 15.03.2011 stands already rejected and the Government vide letter dated 14.06.2010 has written to the college to take action against her as per by bye-laws. One last opportunity was being given to her to join back her duty without any delay, failing which her services would be terminated. Petitioner, instead of joining her duties, submitted her resignation on 29.09.2012.

12. As regards the assertion that the petitioner was not issued the No Objection Certificate for appearing in the interview for the post of Assistant Professor in Panjab University, it is submitted that the petitioner did not deposit the bond amount as the period of five years for which the petitioner was to service the respondent-college had not expired. It is after the deposit of the amount of ₹9,74,475/- towards bond amount and pay in lieu of three months' notice that the resignation of the petitioner was accepted vide letter dated 19.03.2013 with effect from 11.01.2009, the last date when the petitioner was present for her duties and accordingly, her experience certificate was also issued up to the said date i.e. 11.01.2009. Prayer has thus been made for dismissal of the writ petition.

13. I have considered the submissions made by the counsel for the petitioner and with his assistance, have gone through the records of the case but do not find myself in agreement with the submissions so made by him.

14. The facts are not in dispute, which have been referred to above. It is not in dispute that the petitioner joined the respondents on 05.08.1996 and continued as such till August 2004 when she proceeded on study leave

initially for two years to pursue her Ph.D. On her request, this leave was extended by one year till August 2007. She joined her duties after availing of her study leave in August 2007. She continued as such till 12.01.2009 when she proceeded on leave without pay, which was not accepted but specifically rejected by the college. Thereafter she had come to college on three dates i.e. 01.06.2009, 09.09.2009 and 10.09.2009 but has not worked. The respondent-college was contemplating action to be taken against the petitioner when she submitted her resignation on 26.10.2012 (Annexure P-10) Before the acceptance of the said resignation letter, she was required to submit No Dues Certificate from different departments of the college. She did not get the same, however, the said process was got completed by her, which was received by the college on 19.03.2013 (Annexure R-3/2) leading to the acceptance of her resignation vide the letter dated 19.03.2013 (Annexure P-11), wherein it was mentioned that it was accepted with effect from 11.01.2009, the date on which she had last worked with the college. The factum that she had served the college up to 11.01.2009 stands admitted by the petitioner in her letter dated 24.11.2010 (Annexure R-3/3). She is stated to have worked on 01.06.2009, 09.09.2010 and 10.09.2010 after that but those are of no avail as the interregnum period is a period when she had remained absent as her applications for leave have all been rejected and the intimation to that effect sent to her. The details with regard to her leave which was sanctioned and for which she has absented/not approved have been given in para 5 of the written statement of the college. The evidence which has come on record clearly indicates that the petitioner was not interested in serving the respondents as she had been

on unauthorized leave after 11.01.2009.

15. In the light of the above, the petitioner is not entitled to the pay and allowances for the said period i.e. from 12.01.2009, the date of her absence from duty till the date of acceptance of her resignation on 19.03.2013 as 11.01.2009 was the last date when the petitioner was present for her duties. The experience certificate issued to her, therefore, by the respondents, cannot be faulted with as it is for the period she has served the respondents for which the experience certificate could be issued to her and not for the period she had absented herself, especially in the light of her resignation from service.

16. As regards the claim of the petitioner for the refund of the bond amount, which has been deposited by her i.e. ₹9,74,475/-, the same cannot be said to be wrongly demanded by respondent No.3-college. As is apparent from the bye-laws of the college, Clause 6.14 which deals with study leave (Annexure R-3/5), for study leave of two years or more, the employee of the college was to serve the college after return from leave, for a period of five years. petitioner had submitted the bond with two sureties for serving the college for a period of five years. Her study leave came to an end in August 2007 and, therefore, she was bound to serve the respondents for a period of five years thereafter. It is admitted by the petitioner that she served the respondents up to 11.01.2009 and, therefore, it cannot be said that she had fulfilled the requirement of the bond period. The college was, therefore, justified in calling upon the petitioner to submit the bond amount.

17. As far as refund of pay in lieu of three months' notice, which was deposited by the petitioner is concerned, since she had submitted the

resignation with a request for accepting the same forthwith and has also mentioned that she is ready to deposit the said amount of three months' salary, which is in consonance with the bye-laws of the college, the said deposit by the petitioner also cannot be faulted with and, therefore, she would not be entitled to the refund thereof.

18. As regards the amount of arrears of pay revision is concerned, the said amount stands paid to the petitioner as is clear from the records of the case.

19. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

February 24th, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No