

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

290

CWP-12640-2018

DATE OF PRONOUNCEMENT: 01.03.2023.

RAVI KANT

... Petitioner (s)

Versus

STATE OF HARYANA AND OTHERS

... Respondent(s)

290/2

CWP-15928-2018

HIRA LAL

... Petitioner (s)

V/S

STATE OF HARYANA AND ORS

... Respondent(s)

290/3

CWP-29701-2018

NIDHI BHATT

... Petitioner (s)

V/S

STATE OF HARYANA AND ORS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Sushil Sheoran, Advocate
for the petitioner(s).

Dr. Kapil Bansal, DAG, Haryana.

Mr. Rishabh Gupta, Advocate for respondents No.2 & 3.

ANUPINDER SINGH GREWAL, J.

This order shall dispose of three afore-mentioned writ petitions
as these involve similar questions of law and facts.

The petitioners have sought quashing of the orders dated
01.05.2018 (Annexure P-6) in CWP-12640-2018, 15.06.2018 (Annexure P-
6) in CWP-15928-2018 and 29.10.2018 (Annexure P-5) in CWP-29701-

2018 whereby the applications of the petitioners for waiving off the amount of pay, allowances and security have been rejected. They have sought further direction to the respondents to transfer the bond agreements to the Haryana Public Works Department (Building and Roads) (for short -“PWD (B&R)”.

Learned counsel for the petitioners submits that the petitioners in CWP No.12640-2018 and CWP No.15928-2018 had earlier been appointed as Junior Engineer in the Haryana Vidyut Parsaran Nigam Limited (for short – ‘HVPNL’) on 26.10.2016 while petitioner in CWP No.29701-2018 had been appointed on 07.10.2016. They had furnished the service bond at the time of joining work to the effect that if they leave the job within the period of training or within two years without permission of the department, they would have to refund the pay and allowances to the HVPNL. They had also applied for the post of J.E. in the PWD (B&R) prior to the submission of the application to the HVPNL but as the selection process could not be completed earlier, they were selected as J.E. on 29.05.2017 in PWD (B&R). They had submitted their resignations to HVPNL after their selection but the acceptance of their resignations was subject to the deposit of ₹3,18,201/- in CWP-12640-2018, ₹3,33,216/- in CWP-15928-2018 and ₹8,15,339/- in CWP-29701-2018 as pay and allowances with interest @ 9% per annum and also forfeiture of security amount of Rs.40,400/- which they had deposited at the time of joining as J.E. in the HVPNL. Learned counsel for the petitioners also submits that the petitioners had been on induction training only for a period of five days and they had thereafter served for a period of about 7 months, 10 months and 1 year & 6 months. They had left the respondent-Corporation to join the PWD (B&R) and therefore, the entire amount of salary should not have been recovered from the petitioners. The expenses incurred on training for a

period of 5 days worked out to be around ₹7,000/- per trainee. He also submits that in the case of one Assistant Engineer namely Manoj Saini, who had also furnished a similar bond during his service in HVPNL but on his subsequent appointment in Haryana Urban Development Authority (HUDA), his 70% pay and allowances were waived off by the respondent-HVPNL. He has referred to the office order passed by the respondent-HVPNL at Annexure P-8 in CWP-12640-2018.

Learned counsel for respondents No.2 & 3, however, submits that the salary and allowances along with security had been recovered from the petitioners as it was stipulated in the terms and conditions of their appointment that in case they leave the organization before the period of two years then the said amount would be recovered from them. The petitioners had furnished undertakings by way of an affidavit in this regard at Annexure P-2 in all the above-mentioned writ petitions and also accepted the terms and conditions of appointment at the time of joining. They cannot now turn around and challenge the same.

Heard.

The petitioners in CWP No.12640-2018 and CWP No.15928-2018 had joined as JE in HVPNL on 26.10.2016 and the petitioner in CWP-29701-2018 had joined on 07.10.2016. The petitioners in CWP No.12640-2018, CWP-15928-2018 and CWP-29701-2018 had served for about 7 months, 10 months and 1 year & 6 months respectively. Their appointments were subject to the condition that in case they leave service before expiry of two years, their salaries and securities would be forfeited. They had also furnished an undertaking in this regard. The terms and conditions of their appointment were same and its relevant extract from CWP-12640-2018 is reproduced hereunder:

- a) You will be on probation for 2 years including one year of institutional training. However, training period of one year can be increased or decreased by the competent authority. Further your services can be terminated without assigning any reason, if your work and conduct is not found satisfactory during the probation period.
- b) You will serve the Nigam for a minimum period of two years after completion of successful training, failing which you will be required to refund to the Nigam the entire cost (pay and allowances etc.) incurred by the Nigam on your training alongwith interest thereon from the date of demand @ 8% per annum in terms of Bond submitted by you.”

The affidavits/undertakings were furnished by the petitioners, one of which is at Annexure R-3 in CWP-12640-2018, is reproduced hereunder:

“UNDERTAKING BY WAY AFFIDAVIT

I, Ravi Kant S/O Pal Singh JE/Elect. Presently posted at 132KV. Sub Station HVPNL Kariwala under XEN/TS Division HVPNL Sirsa do hereby undertake as follow:

1. That as per communication dated 20.03.2017 received from Registrar for Engineer-in-chief-Haryana PWD (B&R) Chandigarh I am selected as JE/Elect in Public Works Department (B &R) Haryana, Chandigarh. The offer of appointment has not been issued by the Department. However, EIC Haryana, PWD (B&R) vide memo No 448-eIII-05/43166EL68 /EIII dated 16.03.2017 has conveyed me to appear before the Chief Medical officer of Distt. immediately and furnish the Medical Certificate in original in the office of Engineer-in-Chief, Haryana Public Works (B&R), Department.

Sector-33-A Chandigarh (Nirman Sadan) alongwith attested legible photocopy of matriculation certificate & diploma/degree and original testimonials for verification

2. That my following original documents are with HVPNL, were submitted at the time of joining in the Nigam.

- (i) Matriculation Certificate
- (ii) Diploma Certificate+ All 06 Semester Marksheet
- (iii) B Tech Degree +All 06 Semester Marksheet
- (iv) Scheduled Caste Certificate
- (v) Haryana Residence Certificate:

3. That I am in need of these original documents for the purpose of verification by PWD (B&R) only and not for any other purpose.

4. That I will re-submit these documents to HVPNL immediately after receipt of same from the PWD (B&R) Department.

5. That in case offer of appointment issued to me by PWD(B&R) Department, I will immediately inform HVPNL.

6. That I will join my new assignment in PWD (B&R) Department only getting NOC from HVPNL.

7. That I will deposit all expenses incurred by Nigam on me including training charges and salary drawn by me and any other expenses with interest in accordance with bond agreement and other conditions of offer of appointment, appointment letter & Nigam's instruction in this regard. If I violate any term and condition of this undertaking, the condition of offer of appointment, appointment letter and bond agreement will invoke.

8. That I will abide by all terms & conditions as contained in the offer of appointment issued vide Memo No. Ch-1/PF-7951 dated 07-10-2016 and appointment letter memo no. Ch-3/PF-7951 dated 26.10.2016.

9. That no terminal benefit of the past service rendered in HVPNL will be claimed by me and have no right to claim my lien on the post of JE/Electrical in case I leave

the services in HVPNL on my final selection and joining thereon in PWD (B&R) Haryana.

10. That I further undertake that I will relinquish post of JE/Electrical after completion of all required formalities and an acceptance of my resignation by the HVPNL.”

The petitioners are stated to have served for about 7 months, 10 months and 1 year & 6 months in the HVPNL with an induction training for a period of five days. The expenses, which the respondent–Corporation had incurred on their training, were approximately ₹7,000/- per trainee. It is, thus, manifest that in the appointment letters, it was mentioned that the amount of pay and other allowances including security would be forfeited if they fail to serve the Nigam for a minimum period of two years and they had furnished an undertaking in this regard. It is apt to notice that when the bond agreements (Annexure P-2) were signed by the petitioners, their status vis-a-vis the status of respondent-Corporation as the employer was not on equal terms. They had no option but to adhere to the terms and conditions and furnish undertakings as asked for. In case, they had refused to sign the bond agreements, they would not have been appointed by the HVPNL. The petitioners have tendered their resignations from HVPNL on their selection as J.E. in the Haryana PWD (B&R). They had not left the job for greener pastures or for joining the private sector. The services of the petitioners are being utilised by the Haryana government. The training and experience, which they had gathered from the service in HVPNL, shall be put to good use at the PWD (B&R), Haryana. The expenses for the training were about ₹7,000/- per trainee but the entire pay and salary @ 9% per annum interest for the period served by the petitioners along with the security of ₹40,400/- amounting to ₹3,48,601/- in CWP-12640-2018, ₹3,73,616/- in CWP-15928-

2018 and ₹8,55,739/- in CWP-29701-2018, had been recovered from the petitioners.

It is the sacred duty of the State and its instrumentalities to act fairly and any action which is arbitrary or in violation of Article 14 and 16 of the Constitution of India, would be liable to be struck down by the Court. The petitioners had rendered their services for about 7 months, 10 months and 1 year & 6 months respectively. They had been paid for that period only but, to recover the entire amount of salary and allowances along with security is patently untenable and unreasonable. Engineers contribute immensely in building our nation's infrastructure. They ought to be treated with utmost respect and sensitivity. The impugned action of the respondents is manifestly arbitrary and discriminatory. By the recovery of the entire salary for the period they had worked in the HVPNL, the respondents have been unjustly enriched.

Consequently, the petition is allowed and the impugned orders dated 01.05.2018 (Annexure P-6) in CWP-12640-2018, 15.06.2018 (Annexure P-6) in CWP-15928-2018 and 29.10.2018 (Annexure P-5) in CWP-29701-2018 are set aside. The respondents No.2 & 3 shall refund the recovered amount to the petitioners along with interest @ 9% per annum within a period of one month from now.

(ANUPINDER SINGH GREWAL)
JUDGE

PRONOUNCED ON: 01.03.2023.

SwarnjitS

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No