

2023:PHHC:068409

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

CWP No.219 of 2017
Reserved on: 10.05.2023
Pronounced on: **17.05.2023**

Sushma Petitioner

Versus

Managing Director, Haryana State Warehousing Corporation, Sector 2,
Panchkula, and another. Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- None for the petitioner.

Mr. Lekh Raj Sharma, Advocate,
Mr. Abhishek Sharma, Advocate,
Mr. Abhikant Vats, Advocate, for the respondents.

JAISHREE THAKUR.J

1. The present writ petition has been filed for issuance of a writ in the nature of certiorari for quashing order of recovery of Rs.98,913/- as three months' salary of the petitioner in lieu of three months' notice, with a further direction to refund the said amount along with interest @ 12% per annum.

2. In brief, the facts as pleaded are that the petitioner was appointed as Junior Technical Assistant in Haryana Warehousing Corporation vide office order dated 24.08.2009 Annexure P-1. The terms and conditions of the appointment letter were contained therein. The petitioner, while working in the office of the respondents, applied for the post of PGT Biology in Education Department of Haryana as advertised vide advertisement No.1 of 2012. Her application was sent through proper

channel. Thereafter, 'No Objection' was conveyed to the petitioner by the respondents vide memo dated 25.07.2012. The petitioner was ultimately selected and appointed as PGT Biology in the Education Department of Haryana and in order to join her services, the petitioner applied for relieving her vide Annexure P-4. It is alleged that despite having issued a 'No Objection Certificate', the petitioner was not relieved and instead was pressurized to deposit three months' salary in lieu of three months' notice by her. The petitioner objected to the action of the respondents asking her to deposit three months' salary in lieu of notice, however, as the No Objection was not being issued by the respondents, the petitioner had no option but to deposit the said amount as she was in fear of losing an opportunity to join at her new post. An amount of Rs.98,913/- was deposited vide receipt No.7724 on 12.08.2012. Thereafter, the Manager, State Warehousing Corporation relieved her from the services vide office order dated 12.08.2014 but vide Annexure P-6, the Managing Director issued an order accepting the resignation tendered by the petitioner, which request was never made by the petitioner.

3. Aggrieved against the action of the respondents in forcing the petitioner to deposit three months' salary as a pre-condition to be relieved from her duties from the Haryana State Warehousing Corporation as well as treating her letter to be relieved as a letter of resignation, the present writ petition has been filed.

4. No one put in appearance on behalf of the petitioner on 10.05.2023 when the matter was taken up for hearing. Same was the position on the previous occasion as well.

5. The case as set out by the petitioner is that once there was No Objection Certificate issued by the respondents vide office order dated 25.07.2012 for applying for the post of PGT Biology in Education Department, Haryana, the action of asking the petitioner to deposit three months' salary in lieu of notice, was illegal and without any justification. The case as set out is that once a No Objection Certificate had been issued to apply for the post of PGT Biology advertised under the Haryana School Teachers Selection Board, the question of treating her request for being relieved as a letter of resignation would not be sustainable. In fact the Manager had relieved her from services on her depositing the required sum of Rs.98,913/- in lieu of three months' salary but the Managing Director without any basis treated her request for relieving to be an acceptance of her letter of resignation.

6. Learned counsel appearing on behalf of the contesting respondents No.1 and 2 would submit that No Objection Certificate given by the Department to apply for the post was conditional one clearly stating that she will be relieved from the services of the Corporation in accordance with the terms and conditions of the Corporation. In fact as per Regulation No.9 of the Haryana State Warehousing Corporation (Officers and Staff) Regulation, 1994 (hereinafter called as "1994 Regulation"), it is specified that no regular employee shall leave or discontinue his service in the Corporation without giving three months' prior notice and in case employee is on probation, one month's notice in writing to do so to the appointing authority, and in case an employee leaves or discontinues his service with the Corporation in contravention of these provisions, such an employee shall be

liable to pay compensation to the Corporation. It is submitted that the petitioner herein deposited three months' salary amounting to Rs.98,913/- out of which an amount of Rs.50,531/- stands refunded to her by the Corporation for a period of 47 days, which fact was concealed by the petitioner at the time of filing the writ petition. The balance amount thus comes to be Rs.48,382/-.

7. Replication has been filed by the petitioner stating that the refund of the amount was after the filing of the writ petition and, therefore, there was no mention of the same. However, as an amount of Rs.48,382/- has still been retained illegally, the petitioner is entitled to interest on the amount so retained as well as interest on the amount from the date it was deposited till refunded.

8. I have heard learned counsel for the respondents and have gone through the paper book.

9. The petitioner was appointed as a Junior Technical Assistant on probation for a period of two years vide appointment letter dated 24.08.2009, which probation period she completed on 31.08.2011 and thereafter, was regularized on the said post w.e.f. 01.09.2009. Against the advertisement in 2012 for the post of PGT Biology, she applied through proper channel and got No Objection from the department. In the year, 2014, she was selected, and her relieving request was considered as per Regulation 9 of 1994 Regulation, vide which she was directed to deposit three months' salary in lieu of three months' notice. Said stand of the respondents was protested by the petitioner by contending that once she had obtained No Objection before applying for the post of PGT Biology, the question of depositing three

months' salary in lieu of three months' notice, does not arise and she be relieved from the service so that she may join at her new post. She even served a legal notice dated 02.09.2015 Annexure P-7 as well which was duly replied to, reiterating the provisions of Regulation 9 of 1994 Regulation.

10. A perusal of appointment letter of the petitioner would show that she was appointed in terms of Regulation 10 of 1994 Regulation. In the No Objection Certificate that was issued on 25.07.2012 for applying to the post of PGT Biology, it was specifically mentioned that she will be relieved from the services of the Corporation according to the terms and conditions of the Corporation. The petitioner was a regular employee and Regulation 9 of 1994 Regulation, specially provides for deposit of three months' salary in lieu of three months' notice. Regulation 9 is reproduced as under:-

- “i) No regular employee shall leave or discontinue his service in the Corporation without giving three months notice and in the case of employee on probation, one month notice in writing of his intention to do so to the appointing authority.*
- ii) If an employee leaves or discontinues his service in the Corporation in contravention of these provisions, such an employee shall be liable to pay as compensation to the Corporation a sum equal to his salary for the period by which the notice given fall short of the specified period of notice at the rate at which he was paid immediately before the date of his leaving the service or discontinuance therefrom; Provided that the Appointing Authority may, for reasons to be recorded in writing waive off, either wholly or in part, the requirement of the payment of such compensation.”*

11. A reading of the appointment letter combined with the regulations of 1994 Regulation would lead to the conclusion that in case a

regular employee shall leave or discontinue his service in the Corporation without giving three months' notice, three months' salary in lieu thereof will have to be deposited. Merely because a No Objection was given to the petitioner allowing her to participate in the selection process for the post of PGT, it cannot be construed as the waiver of the three months' notice as envisaged under the Regulations, that too when the NOC clearly mentioned that the petitioner would be relieved in terms of the Regulations. The petitioner was a regular employee and thus the Regulations would be applicable. The petitioner was required to give a three months' notice before seeking to be relieved or deposit three months' salary in lieu thereof.

12. In the writ petition, it is claimed that the petitioner had sought to be relieved from service, which request was accepted by the Manager, however, the Managing Director has treated her letter seeking to be relieved as her resignation, which is against the record. The argument has merit. Record would reflect that the petitioner had sought to be relieved on her getting appointed as PGT Biology, which letter was accepted by the Manager and he relieved the petitioner from services of the Corporation on her depositing three months' salary. Once the letter issued, there was no occasion for the Managing Director to 'accept her resignation. Even the written statement filed states that the petitioner has been 'relieved as per Rule/Regulation'. Consequently, it is held that the petitioner stood relieved from the services of the respondents.

13. An amount of Rs 50,531/- has already been refunded to the petitioner keeping in view that she had worked 47 days during the three months notice period. There is no mention as to when the amount was

refunded. Since the Court is of the opinion that there is no infirmity in the order asking the petitioner to deposit three months salary in lieu of notice and part refund having been made, there is no merit in the writ petition.

14. Writ petition stands dismissed accordingly.

(JAISHREE THAKUR)
JUDGE

17.05.2023

sanjeev

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No