



ARB-35-2020

212

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

ARB-35-2020

Date of decision:-23.08.2024

M/s JTEKT India Ltd.

...Petitioner

Versus

Manoj Kumar Malhotra

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

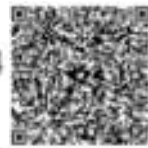
Present: Mr.Harmanjeet Singh, Advocate for
Ms.Priyanka Sud, Advocate
for the petitioner.

Mr.Satya Veer Singh, Advocate
for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. This petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short "the Act") read with Section 12(1) (b) and the Fifth Schedule of the Act for appointment of an independent arbitrator to adjudicate the differences, which have arisen between the parties.

2. Counsel for the petitioner submits that the respondent was engaged as a Manager - Supply Chain Management with the petitioner

**ARB-35-2020****212**

vide appointment letter dated 17.11.2008, Annexure P3 and the respondent was bound by the confidential control policy of the petitioner, which came into effect from 01.04.2018, Annexure P6 as well as by the service rules and office orders enforced by the petitioner from time to time in relation to conduct, discipline, leave, holidays etc. Another agreement dated 19.06.2009, Annexure P5, was executed between the parties, whereunder the respondent agreed that he will serve the company subject to the terms and conditions specified in the appointment letter, Annexure P3, for a minimum period of two years upon completion of training in Japan. Counsel submits that the respondent resigned from his employment on 24.05.2019 and was relieved on 02.07.2019 when an undertaking, Annexure P4, was executed whereunder respondent agreed not to disclose to any third party, any confidential information acquired and accessed during his employment and that he will take all appropriate measures to maintain the secrecy. Counsel submits that respondent breached the confidential policy of the petitioner and he shared information with a competitor. A legal notice dated 31.10.2019, Annexure P8 was served upon the respondent calling for a written unconditional apology to which the respondent submitted a reply on 20.11.2019, Annexure P9. By communication dated 09.12.2019, Annexure P10, petitioner intimated that a former District & Sessions Judge has been appointed as an arbitrator, who issued notice to the respondent to appear. Respondent sent a protest letter, Annexure P11 and in the wake of objections taken by him, arbitration proceedings were withdrawn and the present petition was filed.

**ARB-35-2020****212**

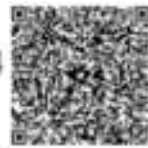
3. Upon notice by this Court, petition has been contested by the respondent by filing a counter affidavit, taking a stand that the agreements, Annexure P3 and Annexure P5 were substituted by an undertaking, Annexure P4, which provides for conciliation between the parties in the event of any dispute or difference. Counsel for the respondent has urged that there is no arbitration agreement between the parties in the undertaking, Annexure P4.

4. I have heard counsel for the parties and considered their respective submissions.

5. There is no dispute about the factual matrix. Respondent was engaged as an employee by the petitioner by appointment letter, Annexure P3 and Clause 18 of the appointment letter provides for resolution of any dispute or difference arising out of the employment by referring it to a sole arbitrator to be appointed by the Chairman of the petitioner. A supplementary agreement dated 19.06.2009, Annexure P5, was executed between the parties, which laid down additional terms and conditions. Clause 7 of the second agreement, Annexure P5, is relevant and is reproduced hereunder:-

“7. That this agreement shall subsist throughout the employment period of the employee and shall not be withdrawn in between without the express permission of the company”

6. Respondent resigned from the employment of the petitioner and while being relieved on 02.07.2019, an undertaking, Annexure P4, was entered into, which provided that during the course of service, if he had been entrusted or has acquired certain vital and confidential information from the petitioner, he will keep it confidential and not

**ARB-35-2020****212**

share it with any third party. In the event of breach of undertaking, it was mentioned therein that the petitioner would be at liberty to take such action against him as may be deemed fit. It was also stipulated in the undertaking, Annexure P4, that in case of any breach of the undertaking, respondent will be liable to compensate the petitioner with costs, expenses, damages etc. to be determined by the petitioner. This undertaking was for an indefinite period and one of its clauses, which is relevant for the purpose for adjudication of this petition, provides as under:-

“All disputes, controversies or differences, which may arise out of or in connection with or in relation to this undertaking including any dispute relating to its validity and effect, the same shall be referred to the conciliation of the Chairman and Managing Director of JTEKT India Ltd., or his successor.”

7. A combined reading of both the agreements, Annexures P3 and P5, show that during the course of employment, respondent besides adhering to the service rules was bound to keep all the information received from the company, as confidential. Any breach of the condition of any of the two agreements would make him liable for payment of damages as provided in the agreements. One of the remedies provided to the petitioner was invocation of arbitration clause, which was provided in Clause 18 of the agreement, Annexure P3. A clear stipulation was incorporated in the agreement, Annexure P5 that it shall subsist during the employment period. A natural corollary is that at the end of his employment on 02.07.2019, both the agreements, Annexures P3 and P5 came to an end. At that stage, the petitioner entered into an undertaking,

**ARB-35-2020****212**

Annexure P4, with the respondent. The covenant entered in the undertaking, Annexure P4, is for reference of any dispute or disagreement between the parties in relation to the undertaking, for conciliation to the Chairman and Managing Director of the petitioner or his successor. There is no clause in the undertaking, Annexure P4, for referring any dispute for adjudication or determination to an arbitrator. It is, therefore, clear that in the absence of any arbitration clause in the undertaking, Annexure P4, the petitioner could not invoke the arbitration clause in the agreement, Annexure P1, which ceased to exist with the end of employment on 02.07.2019.

8. As a result of the above discussion, there is no merit in the petition, which is dismissed.

9. In case the petitioner wants to enforce the undertaking, Annexure P4, it shall be open to it to do so in accordance with law.

(SUVIR SEHGAL)
JUDGE

23.08.2024**Brij****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**