

202 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-7316-2011 (O&M)
Date of Decision:27.02.2024

Parveen Mehra

.....Petitioner

versus

Haryana Power Generation Corporation and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. R.K. Malik, Sr. Advocate with
Mr. Varun Veer Chauhan, Advocate for the petitioner.

Mr. Surender K. Mahajan, Advocate for respondents..

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *Certiorari* for quashing the order dated 27.09.2010 (Annexure P-10).

2. The brief facts of the present case are that the petitioner was earlier working on the post of Lecturer in Electrical Engineering in Technical Education Department, Haryana. Thereafter, vide Annexure P-1 dated 12.08.2004 he was appointed to the post of Assistant Engineer in the office of respondent-Haryana Power Generation Corporation Limited (hereinafter to be referred to as 'Corporation'). Specific conditions were imposed in the aforesaid appointment letter that he will remain under training for a period of one year, however the aforesaid period of one year can be increased or decreased by the competent authority. Another condition was imposed that the petitioner will remain under probation for one year after successful completion of the training period and his services shall be terminated without assigning any reason if the work is not found satisfactory. It was further

stipulated in the aforesaid appointment letter as a condition that he will execute a bond on the proforma enclosed that he will serve the Corporation for a minimum period of two years after completion of successful training, failing which he will be required to refund to the Corporation the entire cost (Pay and allowances etc.) incurred by the corporation on his training alongwith interest @9% per annum.

3. The petitioner joined the aforesaid Corporation on 27.08.2004. Thereafter, vide order dated 04.10.2006 (Annexure P-4), he was repatriated to his parent department i.e. Technical Education Department, Haryana which falls under Government of Haryana. At the time of joining the office of respondent-Corporation, the petitioner had executed the bond vide Annexure P-2 in terms of the aforesaid condition imposed in the appointment letter. After the aforesaid repatriation, the respondents-corporation issued a show cause notice to the petitioner that after the training of one year as stipulated in the appointment letter, he has not completed a period of two years and he will be liable to refund the entire cost (Pay and Allowances) incurred by the Corporation, to which the petitioner filed a reply. Thereafter, vide Annexure P-8 dated 24.03.2009 an order was passed directing the petitioner to deposit an amount of Rs.8,15,394/- alongwith the interest @ 9% per annum within a period of 30 days.

4. Against the aforeasid order, the petitioner preferred an appeal before the Chairman, Haryana Power Generation Corporation Limited, Panchkula vide Annexure P-9 and thereafter vide Annexure P-10, the appellate authority had directed that the cost incurred by the Corporation upon the petitioner on his training was worked out to be Rs.2,09,060/- and

he was to pay the aforesaid amount alongwith the interest @9% per annum. Thereafter, the petitioner filed second appeal, challenging the aforesaid action of the respondent-Corporation whereby he was directed to refund an amount of Rs.2,09,060/- alongwith interest @ 9% per annum but the same was dismissed vide Annexure P-11.

5. Mr. R.K. Malik, Senior Advocate, for the petitioner has submitted that the action of the respondent-Corporation in passing the impugned orders vide Annexures P-8 and P-10 is totally arbitrary, against the record and against the terms and conditions of the appointment letter itself as also against the instructions issued by Government of India in this regard. While referring to the terms and conditions of the appointment letter, he submitted that it was so specifically provided in para No.2 (a) of the appointment letter vide Annexure P-1 that the petitioner will remain under training for a period of one year but training period of one year can be increased or decreased by the competent authority. He further submitted that although there was no specific order passed by the competent authority with regard to training period of the petitioner which could be increased or decreased but as a matter of fact the petitioner underwent training from 06.09.2004 to 17.09.2004 regarding which the order has been attached vide Annexure P-3 and it has been so specifically stated in the aforesaid order that the training fee would be Rs.25,000/- per participant. He further asserted that in this way the total period of training of one year stood decreased to only 11 days which he actually underwent and training fee had also been paid by the petitioner.

6. He referred to para 2 (c) of the appointment letter wherein it has been so stipulated that the petitioner will serve the Corporation for a period

of two years after completion of successful training and it is only in default of the same that he shall be liable for refund of the entire cost (pay and allowances). He submitted that in the light of Annexure P-3, he completed his training on 17.09.2004 whereas he was repatriated to the Technical Education Department vide Annexure P-4 on 04.10.2006 and in this way after the training he has spent more than two years in the office of respondents-Corporation and therefore there was no violation of any condition of the appointment letter. He submitted that even in the reply which has been filed by the respondents-Corporation, there is nothing to suggest or define as to what was the training period apart from Annexure P-3 and whether the petitioner had taken any other training or not. Therefore, it can only be inferred that the aforesaid period of 11 days i.e, from 06.09.2004 to 17.09.2004 was the only training period which the petitioner underwent on the payment of cost regarding which the condition of Para 2 (c) of the appointment letter was stipulated that in case the petitioner did not complete two years after training then the cost of the training plus pay and allowances should be refunded by the petitioner. He further submitted that therefore the order by which the petitioner has been directed to refund back the cost is totally against the record as well as the appointment letter itself.

7. Learned Senior counsel also referred to Annexure P-13 wherein another employee namely Rajeev Kumar Budhiraja, who had resigned from the job was also asked to refund the aforesaid amount and the aforesaid letter was written by the Additional Secretary, HSEB, Panchkula to the General Manager/Plants, PTPS, HSEB, Panipat, wherein reference was made to a Circular of Government of India bearing No.28021/1/84-Estt.(c) dated

14.11.1984 in which it has been laid down that when an employee of public enterprise, who has received scientific/technical training at the cost of the enterprises, should not be enforced in case he joins the Central Government or State Government, a quasi Government Organization or another public enterprises, subject to the condition that a fresh bond is taken to ensure that the employee serves the new employer for the balance of the original bond period. He further submitted that in terms of the aforesaid Government of India's circular letter, the bond qua the aforesaid Rajeev Kumar Budhiraja, was not enforced because it was the decision of the Government of India as so implemented by the Haryana State Electricity Board that once an employee goes to a Government or Quasi Government organization then the aforesaid condition is not to be enforced subject to the condition that in the fresh assignment he executes a fresh bond. Learned Senior Counsel further submitted that in the present case even otherwise also when he was repatriated vide Annexure P-4 then he got repatriation to the Government department itself i.e. Technical Education Department and therefore otherwise also he was fully covered by the aforesaid instructions issued by Government of India dated 14.11.1984 which have been so mentioned in Annexure P-13 as aforesaid.

8. He further submitted that so far as the execution of a bond when he joined the department of Technical Education, Haryana, is concerned, he may not have executed any bond out there but right from the time when he was repatriated in the year 2006, he had been continuously serving in the aforesaid department and will retire on 30.04.2026. Therefore the purpose on the basis of which the aforesaid circular was issued already stands fulfilled.

While again referring to the aforesaid circular which has been so reproduced in the contents of Annexure P-13, he submitted that it has been so stated in the circular that the purpose of execution of bond in the new enterprise was to ensure that the employee serves the new employers for the balance of the original bond period whereas in the present case he rather continued on that post right from the year 2006 in the Government department till date and therefore the purpose of the aforesaid circular itself got fulfilled. He further submitted that in view of the aforesaid circular of the Government of India which has been adopted by the Haryana State Electricity Board, the condition of refund in terms of Clause (c) of para 2 of the appointment letter could not have been enforced qua the petitioner and therefore the action of the respondent-Nigam is arbitrary. He further submitted when the notice of motion was issued by this Court, the recovery/refund was stayed and as such directions may be issued to the respondents-Corporation not to recover the amount in question and to quash the orders at Annexures P-8 and P-10.

9. On the other hand, learned counsel appearing on behalf of respondents-Corporation submitted that once the petitioner accepted the appointment letter vide Annexure P-1 wherein specific condition was provided and he joined on the post of Assistant Engineer then he was bound by the terms and conditions of the aforesaid appointment letter and therefore now he cannot say that he will not accept the terms and conditions of the aforesaid appointment letter. He also submitted that in pursuance of the appointment letter, the petitioner himself executed a bond vide Annexure P-2 and once he himself executed a bond then he is bound to refund the cost as so assessed by the appellate authority to the tune of Rs.2,09,060/- alongwith

interest. He further submitted that so far as the circular of the Government of India which has been so incorporated vide Annexure P-13 is concerned, the same would not be applicable to the petitioner in view of the fact that so far as the aforesaid employee who was granted the benefit namely Rajeev Kumar Budhiraja is concerned, he had resigned from the job whereas so far as the present petitioner is concerned, he himself without the consent of the Haryana State Electricity Board had chosen to get repatriated in the Government department and therefore the aforesaid benefit which was granted to Rajeev Kumar Budhiraja is not applicable to the present petitioner. He also submitted that so far as para 2 (a) of the appointment letter is concerned there is a clear cut stipulation that petitioner will have to remain under training for a period of one year which however can be increased or decreased and once there is no specific order for reducing or increasing of the training period, the petitioner was under an obligation to have served the respondent-Corporation for a period of one year for training and thereafter for a period of two years which the petitioner has not completed. He submitted that in other words a total period of three years which was stipulated in the appointment letter, the petitioner has not served/completed and therefore in the light of the aforesaid condition which was accepted by the petitioner and in the light of the bond executed by him (Annexure P-2) he was liable to refund the aforesaid amount.

10. I have heard learned counsel for the parties.

11. The controversy involved in the present case is that the petitioner who was appointed as an Assistant Engineer in the respondent-department had accepted the appointment based upon certain conditions which have

been so incorporated vide Annexure P-1 itself. Para No. 2 of the aforesaid appointment letter wherein conditions have been stipulated are reproduced as under:-

2. It should be carefully noted by you that the terms & conditions for appointment will be as follows:-

(a) You will remain under training for a period of one year. However, training period of one year can be increased or decreased by the competent authority. The Corporation can terminate your services without notice if your work and conduct during the training period is not found satisfactory.

(b) You will be on probation for one year after successful completion of training. Your services can be terminated without assigning any reason if your work and conduct is not found satisfactory during the probation period.

(c) You will execute a bond with the Corporation on the proforma enclosed that you will serve the Corporation for a minimum period of two years after completion of successful training, failing which you will be required to refund to the Corporation the entire cost (pay and allowances etc.) incurred by the Corporation on your training alongwith interest thereon, from the date of demand @ 9% per annum.

(d) You will be required to serve anywhere in the State of Haryana or any other places in India where HPGC/State Government may so desire in public interest.”

12. Thereafter, the petitioner also executed a bond vide Annexure P-2

in pursuance of conditions No. 2 (c). He was repatriated to the Government Department i.e. Department of Technical Education, Haryana, vide Annexure P-4 on 04.10.2006. The plea taken by the learned Senior Counsel for the petitioner was that the aforesaid period of one year which has been so stipulated in para 2 (a) of the appointment letter was a variable period and it was not a fixed period and the variation was based upon the actual time spent on training and which was on payment basis and he also relied upon the period during which the petitioner had undergone training vide Annexure P-3 which was only 11 days and regarding which a fee was also fixed and the same was paid by the petitioner. The case of the petitioner is also that once the condition itself was variable in nature then the period which he actually undergone was to be seen for the purpose of calculation of period of two years which was meant for doing duties in the Corporation after the training period. According to the petitioner, his training completed on 17.09.2004 and he was repatriated on 04.10.2006 which is more than two years and since he had spent more than two years after the completion of the training, he did not violate any of the conditions of the appointment letter. It is also a case of the petitioner that in view of Annexure P-13 which although relates to another employee who was granted benefit would also show that the respondents have given effect to Government of India circular. However, it is the case of the respondent counsel that the aforesaid period of one year was not variable and he had to complete one year period of training and thereafter to complete two years and a total period of three years, the petitioner should have completed.

13. A perusal of the reply which has been filed by the respondent-

Corporation would show that there is nothing to suggest in the reply or in the arguments raised by learned counsel for the respondent-Corporation that how much total time the petitioner had spent on training. A perusal of the condition referred in para 2(a) of appointment letter would show that although it has been so provided that the petitioner will remain under training for one year but it is subject to an added condition that period of one year can be decreased or increased by the competent authority. The case of the petitioner is that the aforesaid training period has been decreased to 11 days and it was the only period which he had spent on training after paying the requisite fee. Nothing has been brought on record by the respondent to show as to what was the period of training the petitioner had actually undergone. The only contention of the learned counsel for the respondent is that the aforesaid period of one year was constant. However, this Court is unable to agree with the contention of the learned counsel for the respondents-corporation that the aforesaid period of one year was constant. Had it been so then no different provisions could have been incorporated in the appointment letter. Once the period of one year has been made subject to the condition that the period can be decreased or increased and the petitioner has been able to show that he had undergone training only for 11 days as aforesaid then onus shifted upon the respondent-Corporation to satisfy and to bring on record that the petitioner had undergone training for a period in excess of the aforesaid period of 11 days which the respondent-Corporation has not been able to show to this Court and nothing has been stated in the reply filed by the respondents-Corporation regarding the same. Therefore, as per the aforesaid period of training as so referred by the petitioner that he had

completed training on 17.09.2004 and he was repatriated vide Annexure P-4 on 04.10.2006 which was more than two years and therefore para 2 (c) remains satisfied.

14. Apart from the above even otherwise also a perusal of Annexure P-13 would show that the respondents-corporation had rather relied and implemented the circular issued by the Government of India and had made applicable to some other person although on different facts. The aforesaid relevant portion of letter issued by respondents-Corporation referring to Government of India circular is reproduced as under:-

“The amount spent on trainee during his tenure with the Board as JE/Trainee may not be recovered in light of Govt.of India's circular letter No.28021/1/84-Estt. (c) dated 14.11.84 which inter alia lays down as under:-

“An employee of a public enterprise, who has received scientific/technical training at the cost of the enterprises, should not be enforced in case he joins the Central Govt.,or State Govt., a quasi Govt. Organization or another public enterprises, subject to the condition that a fresh bond is taken to ensure that the employee serves the new employer for the balance of the original bond period.”

15. A perusal of the aforesaid circular would show that the Government of India had rather issued a circular in the year 1984 with regard to the aforesaid bond which is executed in such like manner the same could not be enforced in case where the employee joins a Central, State

Government or a Quasi Government organization or any other public enterprises. In the present case the petitioner was repatriated to Government organization itself i.e. in the department of Technical Education. However, the aforesaid condition incorporated was also subject to the condition that a fresh bond is taken to ensure that the employee serves the new employer for the balance of the original bond period. In other words, the rationale and the objective of the aforesaid circular issued by the Government of India was to ensure that an employee when he leaves a public enterprise and joins another public enterprise or a Government department, he at least continues in the subsequent enterprise for its balance period. In the present case the petitioner had joined the Government department itself on 04.10.2006 vide Annexure P-4 and is continuously serving in the aforesaid department and will retire on 30.04.2026. Therefore, the objective of the aforesaid circular stood fulfilled. The rationale behind the issuance of the aforesaid circular is clear from the language used in the circular itself wherein it has been so provided that the fresh bond is to be taken to ensure that the employee serves the new employer for balance period which has been done in the present case. The mere fact that when the petitioner after his repatriation, joined the department of Technical Education, Haryana, he may or may not have executed bond with the Government of Haryana would not make any difference because he is continuously serving in the aforesaid department and will retire on 30.04.2026 and till date he has completed not only balance period of one year (assumingly the same to be so) but has completed about 18 years. An explanation was given by learned counsel for the respondents-corporation while referring to para 10 of reply that the circular of Government of India

would apply only when an employee gets relieved from initial organization through proper channel but when he leaves of his own as in the case of petitioner then the circular is not applicable, is misconceived. There is nothing in the circular as reproduced above to support the same. In this way the petitioner was clearly covered by the aforesaid Circular of Government of India because he was repatriated to the Government itself i.e. the Department of Technical Education where he is still serving for about 18 years .

16. In view of the aforesaid facts and circumstances of the present case, this writ petition is allowed. The impugned orders at Annexures P-8 and P-10 are hereby set aside. It is held that the respondents-Corporation cannot recover an amount of Rs.2,09,060/- alongwith interest from the petitioner. However, there shall be no order as to costs.

(JASGURPREET SINGH PURI)

JUDGE

27.02.2024

shweta

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