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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-23535-2018 (O&M)
Date of Decision: 27.02.2024

(I)
Brijesh Singh

....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CWP-23536-2018 (O&M)

(II)
Parveen Kumar

....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CWP-12297-2022 (O&M)

(III)
Anil Kumar and others

....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM: HON’BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Kshitij Sharma, Advocate,
for the petitioner in CWP-23535-2018 and CWP-23536-2018.

Mr. Manjeet Singh, Advocate,
for the petitioners in CWP-12297-2022.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

Mr. Hitesh Pandit, Advocate, for respondent No.2-HSAMB.

Mr. Vinod Kumar, Advocate, for
Mr. Rajesh Lamba, Advocate for respondent No.4 in
CWP-23535-2018 and CWP-23536-2018.

Mr. Prashant Kapila, Advocate, for respondent-Bank.

JASGURPREET SINGH PURI, J. (Oral)

1. All the three cases are taken up together for final disposal with the consent of learned counsel for the parties since the subject matter involved in all the three cases is similar in nature.

2. For the sake of convenience facts are being taken from Civil Writ Petition No. 23535 of 2018.

3. The brief facts of the present case are that the petitioner was working in the respondent-Bank and vide Annexure P-1, an option was asked from the employees of the respondent-Bank for going on deputation to various other organizations since the financial condition of the Bank was weak. Vide Annexure P-2, the petitioner exercised the option for going on deputation to respondent No.2-HSAMB and consequent thereupon, vide Annexure P-4, he joined the aforesaid Board on 31.10.2013. Vide Annexure P-6, a decision was taken to absorb the petitioner on fulfilling of one year service. Thereafter in principle vide Annexure P-7, it was approved that the petitioner is to be absorbed in the respondent-Board. Even a no objection was also sought from the respondent-Bank vide Annexure P-9 and vide Annexure P-10 thereafter a no objection was given by the respondent-Bank.

Vide Annexure P-11 various other similarly situated employees were absorbed in the respondent-Board but no final decision has been taken so far as the present petitioner and the other petitioners in the connected cases either by the Government or by the Board. Thereafter, vide Annexure P-12, the petitioner was repatriated back to the Bank. The aforesaid action of the respondents in repatriating the petitioner back to the Bank was challenged by the petitioner by filing a writ petition before this Court. Civil Writ Petition No.23299 of 2014 was filed by the petitioner and some of the other petitioners and it was directed that the interim order shall be in same terms as that of another writ petition i.e. CWP No.22863 of 2014 and the order which was passed in the aforesaid writ petition i.e. CWP No.22863 of 2014 was that in the meantime, operation of the impugned order qua the petitioner shall remain stayed and in this way in view of the interim order passed by this Court, the petitioner continued to stay in the respondent-Board. Thereafter four petitions were disposed of by a common order vide Annexure P-15 by a Co-ordinate Bench of this Court on 30.11.2017 with a direction that the Government take a decision on absorption of the petitioners in these cases and pass an order within a period of three months and it was also so directed that if the Government decides not to absorb the petitioners/any of them, and subsequently they are proposed to be declared surplus in the respondent-Bank or as is contended by the learned counsel for the petitioners that the Bank itself is under process of closure, the petitioners would have a right to approach this Court again and simultaneously approach the Government for absorption at that stage in other departments/corporations/organizations of the Government. Thereafter,

vide Annexure P-16, an order was passed by the Principal Secretary to Government of Haryana, Agriculture and Farmers Welfare Department on 21.08.2018 whereby it was so decided that since some of the other persons which were on deputation with the Marketing Board have been sent back to their respective departments and in order to avoid any discrimination, the petitioners of the aforesaid case i.e. Parveen Kumar and Brijesh should also be repatriated to their parent department/organization with immediate effect. The aforesaid order has been challenged in the present petition.

4. In CWP No.12297 of 2022, there are ten petitioners and there is no interim order in the present petition, whereas there are interim orders which have been passed in CWP No.23535 of 2018 and CWP No.23536 of 2018 wherein the operation of the order Annexure P-16 was stayed. In this way two petitioners in CWP No.23535 of 2018 and CWP No.23536 of 2018 are still working in the respondent-Board in the light of the interim orders which were passed in those cases. So far as CWP No.12297 of 2022 is concerned, there are ten petitioners and as per learned counsel appearing on behalf of the petitioners, two of them are still working with the respondent-Board and remaining have now gone back to the Bank since there was no stay order in the aforesaid writ petition.

5. Learned counsels appearing on behalf of the petitioners have submitted that since the financial condition of the Bank was weak, a decision was taken by the Bank to send their employees to various other Government and quasi Government organizations and in pursuance thereof, an option was called for way back in the year 2013 and options were exercised by the petitioners and they had gone on deputation to the

respondent-Board. Thereafter various communications were there between the Bank and the Board and even no objection was also given by the Bank that they have no difficulty in case the petitioners are absorbed in the respondent-Board. In this way, the matter went on smoothly initially after no objection was given by the Bank but no final decision was taken with regard to the final absorption in the respondent-Board. Since no final decision was taken and they were sought to be repatriated back to the Bank which was otherwise having weak financial condition, they had to file a petition before this Court in which interim order was granted and thereafter the petition was disposed of as aforesaid. When the Government i.e. Principal Secretary to Government of Haryana, Agriculture and Farmers Welfare Department passed the impugned order Annexure P-16, the only reasoning given by the Principal Secretary was that since many of the employees who were otherwise on deputation with the Board have been sent back to the respective enterprises including the Bank, then no discrimination could be done.

6. Learned counsels further submitted that the petitioners were sent on deputation to the respondent-Board in the year 2013 and more than 10 years have passed and they are even working there and in case now they are sent back to the Bank, then it will not only affect the service conditions and rights of the petitioners but it will also create a kind of volatile situation because even now the Bank is constantly further again inviting options for sending their employees on deputation to other organizations which was an effort made by the Bank in the year 2013 when Annexure P-1 was passed in view of weak financial condition. They submitted that even if they are now

sent back to the Bank, then they will again face the same problem of seeking an option from them for opting out from the Bank and in this way, in case the petitioners are sent back to the Bank again, then it will not only affect their seniority and their rights with regard to pay etc. but their future will also be uncertain. They also submitted that had it been a case that after the year 2013 the financial condition of the Bank had been improved or was sound and it could have been ensured that they would remain in the Bank for long time, then they would have not pressed their prayer for not going back to the Bank but right from the year 2013 onwards repeatedly the Bank had been inviting options from its employees continuously for again sending their employees to some other organizations and therefore in case they are sent back to the Bank, they will face the same problem which they faced 10 years ago. They again referred to the order passed by this Court vide Annexure P-15 wherein it was so observed that if the Government decides not to absorb the petitioners and subsequently, they are proposed to be declared surplus in the respondent-Bank and the Bank itself is under the process of closure, then the petitioners would have a right to approach this Court again. They submitted that is the reason as to why the petitioners have approached this Court again because in case they are repatriated back to the Bank, then their future will be uncertain because they will be declared as surplus. They also submitted that even otherwise also vide impugned order Annexure P-16, there is no justification for non-absorption of the petitioners in the respondent-Board and the only reason as to why they have not been granted relief was on the basis of non-discrimination and therefore even the aforesaid order Annexure P-16 is a non-speaking order and is not

backed by any reason.

7. On the other hand, Mr. Hitesh Pandit, learned counsel appearing on behalf of respondent No.2-Board submitted that the petitioners were sent on deputation to the Board and there is no order as yet with regard to their absorption and they do not have any legal right for getting permanently absorbed in the Board.

8. Learned counsel appearing on behalf of the respondent-Bank submitted that the financial condition of the Bank is sound.

9. Learned counsels appearing on behalf of the petitioners while replying to the contention raised by the learned counsel for the respondent-Bank have submitted that it is incorrect that the financial condition of the Bank is sound condition in view of the fact that continuously the same exercise is being repeated which was done in the year 2013 and now even a latest letter dated 06.07.2023 has been issued whereby options were again invited for sending the employees on deputation to other organizations and also produced some documents to show that even now the employees are being sent on deputation from the Bank to other organizations continuously. The aforesaid documents are taken on record as mark X (Colly).

10. I have heard the learned counsel for the parties.

11. The controversy involved in the present case is that in the year 2013 when the petitioners were in the respondent-Bank some options were invited for sending them on deputation to the other organizations in view of their weak financial condition. Thereafter, the petitioners have been working in the Board for a number of years. However in CWP No.12297 of 2022, there was no interim order passed by this Court, eight of the petitioners have

now gone back to the Bank but two of them are still working in the respondent-Bank, even if there was no interim order passed by this Court, as per the learned counsel for the petitioners. The matter was pending with the State as well as with respondent-Board with regard to permanent absorption of the petitioners but no final decision was taken and therefore some of the petitioners namely, Parveen Kumar and Brijesh had filed a petition earlier before this Court and consequent upon the same, the impugned order Annexure P-16 has been passed wherein the Principal Secretary to Government of Haryana has decided that since some of the other persons have been repatriated back to their parent organizations and in order to avoid any discrimination, the petitioners are also to be repatriated back to their parent department.

12. It is a case of the learned counsels for the petitioners that the petitioners were being sent from one department to other department with the result that their service conditions are being affected including their right of seniority, promotion, pay scale and various other factors are involved and there is no justification as to why the petitioners could not be absorbed in the respondent-Board. A perusal of the impugned order Annexure P-16 passed by the Principal Secretary to Government of Haryana would show that the only reason for non-absorption of the petitioners namely, Parveen Kumar and Brijesh was that in order to avoid any discrimination they were to be sent back. However, it has been brought to the notice of this Court by the learned counsels for the petitioners that the financial condition of the Bank is still not good and this is the reason as to why now even continuously the employees of the Bank are being sent on deputation at various places and

to substantiate their arguments, they have also placed on record various documents as aforesaid that even recently various employees have been sent on deputation. However counsel for the Bank submitted that financial condition of Bank is sound.

13. This Court is of the view that the impugned order (Annexure P-16) cannot be sustained because the only reason which has been given in the aforesaid order is on the basis of non-discrimination. It was imperative for the Principal Secretary to Government of Haryana to have taken a decision with regard to absorption on its own merits. The claim of the petitioners is not only based upon their continuous service in the respondent-Board for more than 10 years, even on the basis of the stay order but it is also their case that they are employees and they cannot be shifted from one place to another place which would affect their service conditions including promotion and salary etc. In case the Government has decided to repatriate them back to their parent department, then it had to be by way of protecting their rights which emanate from the service and in this case, in case they are now repatriated back, then they would lose their benefits which would not be in accordance with law.

14. After hearing the learned counsel for the parties, this Court is of the view that the impugned order dated 21.08.2018 (Annexure P-16) passed in CWP-23535-2018, impugned order dated 21.08.2018 (Annexure P-14) in CWP-23536-2018 and impugned order dated 01.07.2019 (Annexure P-25) in CWP-12297-2022 cannot be sustained and are therefore set aside. However, it is directed that a fresh decision has to be taken in accordance with law.

Since the rights of the employees are being affected, the decision has to be

taken in a holistic manner by considering all the aspects including the rights of the petitioners because they are being shifted from one place to another place and due care and caution has to be taken while applying mind and for taking a conscious decision in this regard.

15. In view of the above, it is directed that the Chief Secretary of the State of Haryana shall form a Committee consisting of himself as Chairman and Principal Secretary, Agriculture and Farmers Welfare Department and Principal Secretary, Department of Cooperation and then will take a conscious decision backed by cogent reasons in this regard within a period of four months. The aforesaid Committee shall also give an opportunity of hearing to the petitioners or their counsels.

27.02.2024
rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking :

Whether reportable :

Yes/No

Yes/No