



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

CWP-36540 of 2019
Reserved on: 14.10.2024
Pronounced on: 21.10.2024

Simranjit Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Ashish Gupta, Advocate, and
Mr. Varun Gupta, Advocate,
for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

Mr. Adeep Sharma, Advocate,
for Ms. Monica Chhibber Sharma, Advocate,
for respondent No.2.

NAMIT KUMAR, J.

1. Petitioner has filed the instant petition under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari*, setting aside the order dated 17.04.2017 (Annexure P-6), passed by respondent No.2 whereby he has been directed to deposit the requisite salary for the period of three months, which has been set as a pre-condition for acceptance of technical resignation submitted by the petitioner for enabling him to join as a Clerk in the office of Assistant Excise and Taxation Commissioner, Jalandhar. Further a writ of *mandamus* has been sought, directing the respondents to refund the amount of Rs.53,000/-, along with interest @ 18% per annum, which has been deposited by the petitioner in pursuance to passing of the impugned order dated 17.04.2017 (Annexure P-6).



2. The brief facts, as have been pleaded in the petition, are that the petitioner was appointed as Clerk-cum-Data Entry Operator in the office of Punjab Urban Development Authority (hereinafter referred to as 'PUDA') on 15.07.2014 on two years' probation which was extendable upto three years. Thereafter, he was given posting as Clerk in the office of Bathinda Development Authority, Bathinda (hereinafter referred to as 'BDA') and the said authority is directly under the control and supervision of respondent No.2-PUDA.

3. While the petitioner was in service, certain posts were advertised by the Punjab Subordinate Services Selection Board (hereinafter referred to as 'PSSSB') pertaining to the clerical cadre in various departments of Government of Punjab and the petitioner being eligible, applied for the said posts and accordingly vide his application dated 11.01.2016, he applied to the Administrator of BDA, Bathinda, for information and for grant of NOC to apply for the direct recruitment for the said post of Clerk. Vide letter dated 02.02.2016, the request of the petitioner was acceded to and he was granted permission to apply for the post of Clerk on the condition that the petitioner will be bound by the Rules of the PUDA Employees Service Regulations, 1999. Thereafter, the petitioner was appointed as Clerk and was given posting in the office of Assistant Excise and Taxation Commissioner-I, Jalandhar. The petitioner submitted technical resignation dated 19.12.2016 in the office of the BDA, Bathinda, to enable him to join the new post of Clerk in the office of Assistant Excise and Taxation Commissioner, Jalandhar-I. However, no response was given to the



said request, therefore, the petitioner submitted another application dated 27.03.2017 to the BDA, Bathinda, thereby reiterating his earlier request of acceptance of technical resignation. In response thereto, the BDA, Bathinda, intimated the petitioner that his technical resignation cannot be accepted as he was required either to give atleast three months' notice prior to submission of his resignation or to deposit the requisite salary of three months. Since the petitioner failed to do so, therefore, he was directed to deposit a draft for three months' salary amounting to Rs.1,12,878/- (Rs.37,626/- x 3) in favour of PUDA, Mohali. Similar impugned letter dated 17.04.2017 (Annexure P-6) was also addressed to the petitioner by PUDA. Thereafter, the office of Deputy Excise and Taxation Commissioner, Jalandhar, addressed a letter dated 04.05.2017 to the petitioner asking him to clear the issue with regard to technical resignation with PUDA. The petitioner furnished a detailed reply/representation dated 09.05.2017 to the PUDA thereby highlighting that PUDA Employees Service Regulation 1999 do not provide for any rule pertaining to technical resignation and Regulation 43 of the said Regulations provides that if there is no specific provision in the said Regulations, then the provisions of Punjab Civil Services Rules and instructions issued by the Government of Punjab from time to time, will be applicable and since no response was received by the petitioner to the said reply/representation, the petitioner under compelling circumstances submitted a draft of Rs.53,000/- and requested the PUDA authorities to accept his technical resignation w.e.f. 20.12.2016, vide his letter dated 04.09.2017. Thereafter, vide



order dated 06.10.2017, the technical resignation of the petitioner was accepted w.e.f. 20.12.2016. The grievance of the petitioner in the present writ petition is that since he has submitted the application for the post of Clerk through proper channel in pursuance to the advertisement issued by the PSSSB, he was not required to give either three months' notice or deposit three months' salary in lieu of notice period.

4. Pursuant to notice of motion, reply by way of affidavit of Damandeep Kaur, Additional Chief Administrator (HQ), Punjab Urban Planning and Development Authority, SAS Nagar, Mohali, has been filed, wherein it has been stated as under: -

- “1. x x x x.
2. *That the present writ petition has been filed by petitioner seeking quashing of impugned order dated 17.04.2017 (Annexure P/6) passed by respondent no. 2-PUDA whereby petitioner has been directed to deposit the requisite salary for the period of three months as a precondition for acceptance of the technical resignation submitted by the petitioner for enabling him to join as clerk in the office of Assistant Excise and Taxation Commissioner Jalandhar. Further, petitioner is seeking mandamus directing the respondents to refund the amount of Rs.53,000/- along with interest @ 18% p.a. which has been deposited by the petitioner in pursuant to the impugned order dated 17.04.2017 and the same has been deposited by the petitioner to obtain NOC for joining his new place of appointment.*
3. *That it is admitted fact that petitioner was appointed as clerk cum data entry operator with the answering respondent-PUDA vide appointment letter dated*



15.07.2014 (Annexure P-14). The appointment of the petitioner as per appointment letter dated 15.07.2014 was subject to certain terms and conditions. As per condition no. 2 of the appointment letter it was specifically provided as under:-

2.0 "if you wish to resign from your job on any occasion you will be required to give three months notice for this purpose in lieu of this, you will have to deposit three months salary including allowances or the number of days which are less than three months. If Punjab Urban Planning and Development authority purposes to remove you from the service then you will be given such notice or you will be paid salary and allowance for the number of days, if the period is less than 3 months, but in case of misconduct you will before removed from service be given a reasonable opportunity to present your explanation and in such a situation the condition of three months notice will not apply"

Similarly condition no. 3 and 4 of the appointment letter reads as under:-

3.0 "The period of your appointment will be of two yeas which can be extended for three years." By the Competent Authority.

4.0 That your services will be subject to the Punjab Urban Planning and Development Authority employee services regulation 1999, Punjab Civil Service (General and Common Condition Rules) 1994, Punjab Civil service rules and instructions issued by the Punjab Government from time to time.

4. That the petitioner successfully completed his probation period of two years and the services of the petitioner were confirmed vide office order dated 12.09.2016 passed by



answering respondent/PUDA and is annexed herewith as Annexure R/1.

*It is also admitted fact that petitioner applied to Chief Administrator BDA Bathinda vide his application dated 11.01.2016 (Annexure P-1) for necessary information and grant of NOC in order to apply for direct recruitment for the post of clerk in terms of advertisement issued by Punjab Subordinate Services Selection Board in various departments of the Punjab Government. Pursuant to the said request vide letter dated 02.02.2016 petitioner was granted permission by Chief Administrator BDA Bathinda to apply for the requisite post of clerks. However, in the said letter it was also clarified that **he shall be bound by the regulations prescribed in PUDA Employees Service Regulations 1999**. Thereafter petitioner was appointed as clerk in the office of Assistant Excise and Taxation Commissioner Jalandhar and accordingly, petitioner submitted as resignation (Technical Resignation) in the office of Chief Administrator BDA Bathinda. For acceptance and relieving him to enable him to join his new place of appointment vide letter dated 19.12.2016 (Annexure P-3), which was followed by request letter dated 27.03.2017 (Annexure P-4). Vide office order dated 29.03.2017 (Annexure P-5) issued by Chief Administrator Bathinda petitioner was duly informed that his technical resignation letter dated 19.12.2016 cannot be accepted in terms of PUDA employees service regulations 1999 and as per these regulations he should have either given three months notice prior to submission of resignation or should have deposited equal salary for the period of three months which had not been done by the petitioner. Petitioner was further directed that a draft of salary of three months i.e. $37626 \times 3 = 1,12,878/$ may be paid by the petitioner in*



favour of PUDA Mohali as per the terms and conditions of the appointment letter. Similarly vide impugned letter dated 17.04.2017 (Annexure P-6), petitioner was informed by respondent no. 2 that his technical resignation has not been accepted and he was further directed to deposit salary for the period of three months as per PUDA employees Service Regulation 1999 without any delay and in case of failure to do so necessary action would be initiated.

Accordingly, vide demand draft dated 04.09.2017 (Annexure P- 10) petitioner deposited a sum of Rs. 53,000/- in lieu of the demand so raised by the answering respondent-PUDA from the petitioner i.e. for three months salary along with his representation wherein he requested answering respondent that the period from 02.11.2016 to 19.12.2016 i.e. one month 18 days may be treated as notice period and the salary of balance period i.e. one month 12 days which comes to approximately 53,000/- may be ordered to be deposited. Though the petitioner did not challenge the initial letter dated 29.03.2017 (Annexure P-5) and aggrieved by the action of the respondent-authority has challenged impugned letter dated 17.04.2017 (Annexure P-6) and is seeking refund of the amount of Rs. 53,000/- deposited by the petitioner along with interest. Hence the present writ petition.

5. That the main assertion of the petitioner is that he had duly applied through proper channel and in terms of the Punjab Government Instructions dated 19.02.2016 (Annexure P-13) in case of technical resignation there is no requirement of any notice nor any salary is required to be deposited.”



5. Before proceeding further, it is relevant to give reference to the relevant provisions of the Regulations, 1999 governing the service of the petitioner.

6. In exercise of the powers conferred by clause (d) of sub-section (2) of Section 182 of the 'Punjab Regional and Town Planning and Development Act, 1995', Punjab Urban Planning and Development Authority (Employees Service) Regulations, 1999 have been framed. Regulation 20 deals with the cases of resignation of employees and Regulation 43 provides that in the matters for which no specific provision has been made in the Regulations made by the Authority, the provisions of the Punjab Civil Services Rules as amended from time to time and such other rules and instructions as are framed by the Government of Punjab on the subject shall apply *mutatis mutandis*.

7. Regulations 20 and 43 of the Regulations, 1999 read as under: -

“20. Resignation – (1) *An employee who is on probation shall not leave service under the Authority without giving at least one month's notice in writing of his intentions to do so or pay in lieu thereof an amount equivalent to his one month's pay.*

(2) *An employee who has completed his probation period satisfactorily shall not leave service under the Authority without giving atleast three months notice in writing of his intention to do so or pay in lieu thereof an amount equivalent to his three months pay.*

(3) *The Appointing Authority may at its discretion dispense with the requirement of sub-regulation (1) or sub-regulation (2) as the case may be, in appropriate cases.*



- (4) *The resignation submitted by an employee to leave service may be accepted by the Appointing Authority with immediate effect or at any time before the expiry of the period of the notice and in such a case the employee shall be paid for the period actually spent by him on duty in the service.*
- (5) *The Appointing Authority may refuse to accept the resignation if any case of defecation or disciplinary proceedings is pending against the employee, unless the Appointing Authority is satisfied that acceptance of resignation in such a case will not effect adversely the interest of the Authority in any manner.*
- (6) *An employee leaving the service without complying with the provisions of sub-regulation (1) or sub-regulations (2) without giving proper notice and without prior sanction of the Appointing Authority shall be liable to such legal, disciplinary or any other action as may be considered necessary by the Appointing Authority including forfeiture of service.*

x

x

x

43. Matters not provided in these regulations:- *in matters for which no specific provision has been made in these regulations or any other regulations made by the Authority. The provisions of the Punjab Civil Services Rules as amended from time to time and such others rules and instruction as are framed by the Government of Punjab on the subject shall apply mutates mutandis.”*

8. The State of Punjab, Department of Finance, has issued instructions dated 19.02.2016 with regard to technical resignation and it provides that a resignation from service or post entails forfeiture of entire past qualifying service. However, the exception is technical



resignation which does not result in forfeiture of past service and in cases where a Government servant applies for the post in the same or other departments through proper channel and on selection is required to resign the previous post for administrative reasons, the benefit of past service, if otherwise admissible under the rules, is given, treating the resignation as a technical formality. The relevant portion from the said instructions reads as under: -

“Sub: - Technical Resignation.

Sir/Madam,

References are being received from various departments regarding Technical Resignation. This term has not been elaborated in Punjab Civil Services Rules. However, the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi vide their letter no. 28020/1/2010-Estt(C) dated 26.12.2013 has issued detailed instructions in this regard, the relevant portion of which is as under:-

“TECHNICAL RESIGNATION

13. A resignation from the service or post entails forfeiture of entire past qualifying service. The exception is technical resignation which does not result in forfeiture of past service.

14. In cases where a Government servant applied for post in the same or the other Departments through proper channel and on selection, is required to resign the previous posts for administrative reasons, the benefit of past service, If otherwise admissible under rules, is given treating the resignation as a "Technical Formality". Resignation submitted for other reasons or if competent authority has not allowed him to forward his application



through proper channel is a resignation and benefit of past service will not be admissible.

15. This benefit is also admissible to Government servants who applied for posts in same or other Departments before joining Government service and on that account the application was not routed through proper channel. The benefit of past service is allowed in such cases subject to the fulfilment of the following conditions:-

(i) the Government servant at the time of joining should intimate the details of such application immediately on their joining.

(ii) the Government servant at the time of resignation should specifically make a request, indicating that he is resigning to take up another appointment under Government/Government organisation for which he applied before joining the Government service and that his resignation may be treated a 'technical resignation'.

(iii) the authority accepting the resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee. his application would have been forwarded through proper channel."

2. It has been decided that the above provisions shall also be applicable for the employees of Government of Punjab."

9. Learned counsel for the petitioner has submitted that the case of the petitioner would not fall under the provisions of Regulation 20(2) of the Regulations, 1999 as the said provision only deals with normal resignation of an employee and does not deal with technical resignation to enable the employee to join a new post and, therefore,



the action of the respondents in compelling the petitioner to deposit the salary for three months' period is totally illegal and arbitrary. He has relied upon the judgments passed by this Court in ***CWP No.5737 of 2016 – Jagbir Singh and others v. District and Sessions Judge and another dated 10.03.2017*** and ***CWP No.19629 of 2015 – Mangat Ram v. State of Punjab and others dated 16.09.2015***.

10. *Per contra*, learned counsel for the respondents have submitted that the services of the petitioner are governed by the 1999 Regulations and in terms of Regulation 20, the petitioner was duty-bound to either give atleast three months' notice in writing of his intention to resign or to pay salary in lieu thereof of an amount equivalent to his three months' pay and, therefore, the action of the respondents is well within the parameters of 1999 Regulations.

11. I have heard learned counsel for the parties and perused the record with their able-assistance.

12. Admittedly, the petitioner was appointed as Clerk-cum-Data Entry Operator on 15.07.2014 in PUDA, on probation of two years, which he successfully cleared vide order dated 12.09.2016. He applied for the post of Clerk, which was advertised by the PSSSB, after seeking permission from the department and on being appointed as Clerk in the office of Assistant Excise and Taxation Commissioner-I, Jalandhar, he submitted technical resignation on 19.12.2016, however, the same was not accepted by the PUDA/BDA, Bathinda and the petitioner was directed to deposit three months' salary in lieu of three months' notice period. Since during the interregnum the petitioner



continued in service, therefore, he was directed to deposit a sum of Rs.53,000/- which the petitioner had deposited under compelling circumstances to enable him to join his new post in the office of Assistant Excise and Taxation Commissioner-I, Jalandhar. There is no provision of technical resignation in the 1999 Regulations and Regulation 20 of the said Regulations only deals with normal resignation of an employee. As per Regulation 43, the provisions of Punjab Civil Services Rules are applicable on those subjects for which there is no provision in the 1999 Regulations. Instructions dated 19.02.2016 as have been reproduced above provide that a normal resignation from the service or post entails forfeiture of entire past qualifying service whereas in the case of technical resignation the past qualifying service is not forfeited. In this manner, distinction has been carved out for normal resignation and technical resignation. Since the present case is of technical resignation, therefore, action of the respondents in directing the petitioner to deposit three months' salary in lieu of three months' notice period is held to be illegal and arbitrary.

13. This Court in a similar issue while interpreting the provisions of Haryana Civil Services Rules has held as under: -

“Crux of the matter in the present petition is whether the petitioners are entitled for refund of one month salary which has been deposited by them in order to join the new department i.e. medical Education and Research, Haryana and they are entitled for Last Pay Certificate or not?”

It is undisputed that Judicial department and Medical Education and Research are part and parcel of



State of Haryana Government. In order to obtain another appointment in different department under one State Government, question of resignation do not arise. Formal relieving from one department to another department would suffice. If an employee has resigned and joined new department, it would be only a technical resignation as stipulated in Rule 4.19 (b) (supra). Thus, the decision of the 1st respondent in refusing to refund the one month salary deposited by the petitioner and declining to issue LPC would be contrary to the aforesaid provision read with Rule 317 of Punjab Civil Service Rules (Haryana) Volume II and circular dated 9.3.1962. Therefore, reliance on the circular issued by Registrar General, Punjab and Haryana High Court, Chandigarh dated 23.12.2009 has no application in the case of the petitioners for the reasons that it is only a communication dated 23.12.2009 and it cannot over ride statutory rule i.e. 4.19 (b)(supra) read with Rule 317 (supra) which provide for mode of resignation in order to obtain another appointment in a different department. Therefore, order dated 3.3.2015 (Annexure P-8) is set aside. Ist respondent is directed to refund the deposit amount of one month salary by each of the petitioner and so also issue LPC to each one of them within a period of three months from today.

Petition stands allowed.”

14. To the same effect is the judgment of this Court in **Mangat Ram’s** case (supra).

15. In view of the above, present petition is allowed, order dated 17.04.2017 (Annexure P-6) is quashed and set aside and it is held that the action of the respondents in directing the petitioner to deposit three months’ salary in lieu of three months’ notice period is illegal and



Rs.53,000/- deposited by the petitioner, along with interest @ 6% per annum, from the date of deposit till the date of payment, within a period of two months from the date of receipt of certified copy of this order.

21.10.2024
R.S.

(NAMIT KUMAR)
JUDGE

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