(2012) 02 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1362 of 2012

Dr. Alka Sehgal APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 166 PLR 709 : (2013) 1 SCT 293

Hon'ble Judges : Tej Pratap Singh Mann, J;Satish Kumar Mittal, J

Bench : Division Bench

Advocate : Aalok Jagga, for the Appellant;

Judgement

Satish Kumar Mittal, J.—The petitioner has filed the instant writ petition under Articles 226 and 227 of the Constitution of India for quashing of the order dated 14.2.2011 (Annexure P3) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as ''the Tribunal''), whereby the Original Application filed by the petitioner for quashing the letter dated 23.9.2009 vide which she was asked to deposit the amount of Rs. 46,682/- towards leave salary as well as pension contribution for the period she remained on foreign assignment, has been dismissed. The petitioner is working as Senior Lecturer in the Department of Obstetrics & Gynaecology, Govt. Medical College & Hospital, Sector 32, Chandigarh (hereinafter referred to as ''the respondent-College''). Vide letter dated 26.6.2006, she was invited by Hebei Medical University, China for a period of four months for delivering guest lectures on the subject of Gynaecology at its Medical College in China. The said letter was specifically in the name of the petitioner which was routed through the Director/ Principal of the respondent College. After seeking necessary clearances from the Ministries of Home and External Affairs, the petitioner was permitted vide letter dated 9.10.2006 to proceed to Hebei Medical University, China from 9.10.2006 to 8.2.2007. After the return of the petitioner from China, the respondent-College vide letter dated 1.1.2008 asked the petitioner to deposit Rs. 40,926/- towards leave salary and pension contribution for the period she remained on foreign assignment. When the petitioner did not deposit the said amount, another letter dated 23.9.2009 was issued and she was asked to deposit the leave salary as well as pension contribution within 10 days, or else, she would forfeit her right to count the period spent on foreign assignment/foreign service, as duty.

2. Instead of depositing the said amount, the petitioner filed the Original Application before the learned Tribunal seeking directions to quash those letters while claiming that her assignment to Hebei Medical University, China was not a foreign assignment, but on the said assignment she was sent on deputation by the respondent-College, therefore, she is not liable to deposit the amount claimed on account of leave salary and pension contribution.

3. The learned Tribunal dismissed the Original Application while holding that the aforesaid foreign visit of the petitioner cannot be treated as deputation. The said assignment was a foreign assignment at the expense of the foreign institution, and in case the foreign institution does not pay for the leave salary and pension for the said period, the petitioner is liable to pay the said amount, until and unless she takes steps for getting the said period adjusted as leave of the kind due. The said order passed by the learned Tribunal has been challenged by the petitioner in this writ petition.

4. We have heard the learned counsel for the petitioner.

5. The learned counsel for the petitioner argued that the learned Tribunal has dismissed the Original Application filed by the petitioner by holding that since the petitioner was never sponsored by the respondents, according to Fundamental Rule 111, para 2(b) she was not entitled for the said benefit and, therefore, required to pay leave salary and pension contribution. Learned counsel further argued that the case of the petitioner falls in para 2(b) of the above Rule 111 as she was sent to the said assignment on deputation by the respondents.

6. Before the contention of the petitioner is dealt with, paras 2(a), 2(b) and 2(c) are reproduced below:-

(a) Where the United nations or other International Agency offers to the Government servant pay and allowances according to its own rules, the period spent with the Agency by the Government servant will be treated as foreign service. The Agency would be required to pay contributions on account of leave salary and pension for the period of foreign service/consultancy. If the Agency does not pay these contributions, the Government servant himself should pay such contributions. In cases where leave salary and pension-contributions are not paid either by the Agency or by the Government servant concerned, the period spent on foreign service will not count as qualifying service for pension and for determining the leave entitlement.

(b) Where the Government of India sponsors a Government servant for a short term assignment/consultancy with the United Nations and other International

Agency and the Government servant so sponsored is paid by the Agency only subsistence allowance (i.e. daily allowance) or consultancy fee/honorarium or both and not pay and allowances as per its own rules, the Government servant would be treated as on deputation to the Agency and pay and allowances would be paid by the Government of India. The Government servant would be treated as on duty for the entire period of deputation with the agency. Contributions towards leave salary and pension are not payable in such cases.

(c) In cases other than those covered by (a) and (b) above, where a Government servant is permitted by Government to take up short term assignment/ consultancy with the United Nations and other International Agencies and the Agency offers only subsistence allowance of fee/honorarium or both, the period of absence of the Government servant would be treated as leave due and admissible to him. No contribution on account of leave salary and pension will be payable in such cases.

7. A perusal of para 2(a) shows that where the International Agency offers to the Government servant pay and allowances according to its own rules, the period spent by such officer with the Agency will be treated as foreign service. This rule further lays down that the Agency would be required to pay contributions on account of leave salary and pension for the period of foreign service/consultancy. If the foreign Agency does not pay these contributions, the Government servant himself should pay such contributions. In cases where leave salary and pension contributions are not paid either by the foreign Agency or by the Government servant concerned, the period spent on foreign service shall not be counted as qualifying service for pension and for determining the leave entitlement.

8. Para 2(b) of the aforesaid Rule provides that when the Government of India sponsors a Government servant for a short term assignment/consultancy with the International Agency for some assignment and the Government servant so sponsored is paid by the Agency only subsistence allowance or consultancy fee/ honorarium or both and not pay and allowances as per its own rules, the Government servant would be treated as on deputation with the Agency and pay and allowances would be paid by the Government of India. In such situation, the Government servant would be treated as on duty for the period he remained on deputation with the Agency, and contributions towards leave salary and pension are not payable in such cases.

9. Para 2(c) provides that if the case of the Government servant is not covered by (a) and (b) above, where a Government servant is permitted by the Government to take up short term assignment/consultancy with the International Agencies and the Agency offers only subsistence allowance or fee/honorarium or both, the period of absence of the Government servant would be treated as leave of the kind due and admissible to him. No contribution on account of leave salary and pension would be payable in such cases.

10. In our opinion, in the present case the case of the petitioner does not fall

under paras 2(b) and 2(c) of the aforesaid Rule. Rather the case of the petitioner squarely falls under para 2(a).

11. Learned counsel for the petitioner while referring to the order dated 9.10.2006, whereby the petitioner was permitted to proceed to Hebei Medical University, China, argued that the petitioner was sent on deputation. This contention of the learned counsel cannot be accepted as the assignment of the petitioner to the foreign institution in no term can be treated as on deputation. Deputation is deputing or transferring an employee to post outside his cadre, that is to say, to another department on temporary basis. In the present case, respondent No. 3 did not send the petitioner on deputation to Hebei Medical University, China. On the invitation of the foreign institution which was specifically in the name of the petitioner, the petitioner was permitted vide letter dated 9.10.2006 to proceed to Hebei Medical University, China for a period of four months i.e. 9.10.2006 to 8.2.2007, for delivering lectures on the subject. The said period cannot be treated as on deputation. It is also not disputed that during that period the petitioner was paid some honorarium by the foreign institution and not paid the salary in accordance with her regular pay scale in the parent Institute. Merely because the permission was granted to the petitioner by the respondents, the period spent by the petitioner on the aforesaid assignment cannot be termed as on deputation. However, the said period is to be treated as foreign assignment at the expense of the foreign institution. The petitioner was never sponsored by the Government of India to the International Agency. As per para 2(a) when the afore-mentioned period has been spent by the petitioner with foreign institution, then the Agency who had taken the Government servant, is required to pay contribution on account of leave salary and pension for the period of foreign service rendered by the petitioner. If the foreign Agency does not pay these contributions, then the Government servant himself is required to pay such contributions. In case where leave salary and pension contributions are not paid either by the Agency or by the Government servant concerned, the period spent on foreign service will not be counted as qualifying service for the purpose of pension and for determining the leave entitlement. Thus, in our view, the case of the petitioner is fully covered by the parameters laid down in para 2(a) of the aforesaid Rule. Since in the present case the petitioner was not sponsored by the Government of India, the case of the petitioner does not fall under para 2(b). As far as para (c) is concerned, in case where the Government servant is permitted by the Government for a short term assignment to the International Agency and if the International Agency pays only the subsistence allowance or fee/honorarium or both, the period of absence of the Government servant would be treated as leave of the kind due and admissible to him. In that situation, no contribution on account of leave salary and pension will be payable.

12. During the course of arguments an offer was given to the learned counsel for the petitioner to have instructions to make a representation to the competent authority for treating the period of the foreign assignment of the petitioner as leave of the kind due under clause 2(c) of the Fundamental Rule 111, but the

learned counsel refused to accept the said offer. Perhaps the petitioner does not have any leave to her credit.

13. In view of the above legal position, we are of the opinion that the learned Tribunal has rightly dismissed the Original Application of the petitioner while coming to the conclusion that the respondents had no role to play in selecting and deputing the petitioner for foreign assignment/trip, and the request was routed only through the Director/Principal of the respondent-College, inviting the petitioner in person by Hebei Medical University, China. Thus the assignment in question cannot be termed as on deputation, but at best can be called a foreign visit at the expense of the foreign Institution, and in case they do not pay for the leave salary and pension for the period in question, the petitioner will have to pay the same by taking appropriate steps, like taking leave etc. as per Rules, if she wants this period to be treated as service for the purposes of pension and other retiral benefits. In view of the aforesaid, we do not find any ground to interfere in the impugned order passed by the learned Tribunal.

No merits. Dismissed.